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Legislative History – Montana Session Law

Chapter: 151

Session L:

2023

Checklist of Bill History

Bill Number:

SB 13

History and Final Status Sheet



Introduced Bill



Fiscal Note



Third Reading Bill



Final Version of Bill



House

Committee: Judiciary

Hearing Date(s): 3/10/2023

Committee Report: 3/16/2024

Senate

Committee: Judiciary

Hearing Date(s): 1/05/2023

Committee Report: 1/12/2023

Conference Committee

Hearing Date(s):

Conference Committee Report:

Compiler Notes

Compiled by: *J Marshall*

Date: *7/8/2024*

Notes:

Bill Draft Number: LC0360**Bill Type - Number:** SB 13**Short Title:** Revise DUI laws related to admissible tests for presence of drugs**Primary Sponsor:** Keith Regier (R) SD 3**Chapter Number:** 151**Bill Actions - Current Bill Progress:** Became Law**Bill Action Count:** 47

Action - Most Recent First	Date	Votes Yes	Votes No	Committee
Chapter Number Assigned	04/19/2023			
(S) Signed by Governor	04/19/2023			
(S) Transmitted to Governor	04/12/2023			
(H) Signed by Speaker	04/07/2023			
(S) Signed by President	04/05/2023			
(C) Printed - Enrolled Version Available	04/03/2023			
(S) Returned from Enrolling	04/03/2023			
(S) Sent to Enrolling	03/23/2023			
(H) Returned to Senate	03/23/2023			
(H) 3rd Reading Concurred	03/21/2023	96	2	
(H) Scheduled for 3rd Reading	03/21/2023			
(H) 2nd Reading Concurred	03/20/2023	100	0	
(H) Scheduled for 2nd Reading	03/20/2023			
(H) Committee Report--Bill Concurred	03/16/2023			(H) Judiciary
(H) Committee Executive Action--Bill Concurred	03/16/2023	18	0	(H) Judiciary
(H) Hearing	03/10/2023			(H) Judiciary
(H) First Reading	02/17/2023			
(H) Referred to Committee	02/17/2023			(H) Judiciary
(S) Transmitted to House	02/14/2023			
(S) 3rd Reading Passed	01/24/2023	49	0	
(S) Scheduled for 3rd Reading	01/24/2023			
(S) 2nd Reading Passed	01/23/2023	49	0	
(S) Scheduled for 2nd Reading	01/23/2023			
(C) Printed - New Version Available	01/17/2023			
(S) Committee Report--Bill Passed as Amended	01/17/2023			(S) Judiciary
(S) Committee Executive Action--Bill Passed as Amended	01/12/2023	11	0	(S) Judiciary
(C) Amendments Available	01/07/2023			
(S) Hearing	01/05/2023			(S) Judiciary
(S) First Reading	01/02/2023			
(S) Referred to Committee	12/02/2022			(S) Judiciary
(C) Introduced Bill Text Available Electronically	12/01/2022			
(S) Fiscal Note Printed	11/29/2022			
(C) Fiscal Note Unsigned	11/29/2022			
(S) Fiscal Note Received	11/29/2022			
(S) Fiscal Note Requested	11/29/2022			
(S) Introduced	11/28/2022			

(C) Fiscal Note Probable	11/28/2022
(C) Draft in Assembly	11/10/2022
(C) Executive Director Review	11/10/2022
(C) Bill Draft Text Available Electronically	11/09/2022
(C) Draft in Final Drafter Review	11/09/2022
(C) Draft in Input/Proofing	11/08/2022
(C) Draft to Drafter - Edit Review	11/08/2022
(C) Draft in Edit	11/04/2022
(C) Draft in Legal Review	11/04/2022
(C) Draft to Requester for Review	11/02/2022
(C) Draft Request Received	09/14/2022

Sponsor, etc.

Sponsor, etc.	Last Name/Organization	First Name Mi
Requester	Law and Justice Interim Committee	
Drafter	Burkhardt	Julianne
By Request Of	Law and Justice Interim Committee	
Primary Sponsor Regier		Keith

Subjects

Description	Revenue/Approp. Vote Majority Req.	Subject Code
Alcohol and Drugs	Simple	ALC
Criminal Procedure (see also: Law Enforcement)	Simple	CRP
Law Enforcement (see also: Criminal Procedure)	Simple	LEN

Additional Bill Information

Fiscal Note Probable: Yes
Preintroduction Required: Y
Session Law Ch. Number: 151

DEADLINE

Category: General Bills

Transmittal Date: 03/03/2023

Return (with 2nd house amendments) Date: 04/18/2023

Section Effective Dates

Section(s) **Effective Date** **Date Qualified**
 All Sections 19-APR-23

SENATE BILL NO. 13

INTRODUCED BY K. REGIER

BY REQUEST OF THE LAW AND JUSTICE INTERIM COMMITTEE

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING ADDITIONAL TYPES OF BODILY FLUIDS TO TEST FOR THE PRESENCE OF DRUGS IN DRIVING WHILE UNDER THE INFLUENCE CASES; AMENDING SECTIONS 23-2-535, 61-8-1010, 61-8-1016, 61-8-1018, 61-8-1019, 61-8-1032, AND 67-1-211, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 23-2-535, MCA, is amended to read:

"23-2-535. Alcohol concentration standards -- evidence admissible -- administration of tests.

(1) The inferences contained in 61-8-1002 apply to any criminal action or proceeding arising out of acts alleged to have been committed in violation of 23-2-523(2).

(2) Evidence of any measured amount or detected presence of alcohol or drugs in a person at the time of the act alleged, as shown by analysis of the person's blood, breath, oral fluid, or urine, and any other competent evidence bearing on the question of whether the person was under the influence of alcohol, drugs, or a combination of the two at the time of the act alleged is admissible in any criminal action or proceeding arising out of acts alleged to have been committed in violation of 23-2-523(2).

(3) If a person charged with violation of 23-2-523(2) refuses to submit to a test of the person's blood, breath, or urine for the purpose of determining any measured amount or detected presence of alcohol, none will be given, but proof of refusal is admissible in any criminal action or proceeding arising out of acts alleged to have been committed in violation of 23-2-523(2).

(4) The provisions relating to administration of tests provided in 61-8-1019 and the definition of alcohol concentration provided in 61-8-1001 apply to any testing done to a person charged with violation of 23-2-523(2).

(5) As used in 23-2-523(2), the term "under the influence" has the meaning provided in 61-8-

1 1001."

2

3 **Section 2.** Section 61-8-1010, MCA, is amended to read:

4 **"61-8-1010. Driving under influence -- ignition interlock device -- 24/7 sobriety and drug**

5 **monitoring program.** (1) For a person convicted of a first offense of driving under the influence, including 61-
6 8-1002, an offense that meets the definition of aggravated driving under the influence in 61-8-1001, or a similar
7 offense under the laws of another state, in addition to the punishments listed in 61-8-1007, the court may,
8 regardless of disposition and if a probationary license is recommended by the court, require the person to
9 comply with the conditions listed in subsection (2)(a) or (2)(b).

10 (2) On a second or subsequent conviction for a violation of driving under the influence, including
11 61-8-1002, an offense that meets the definition of aggravated driving under the influence in 61-8-1001, or a
12 similar offense under the laws of another state, or a second or subsequent conviction under 61-5-212 when the
13 reason for the suspension or revocation was that the person was convicted of a violation of driving under the
14 influence, including 61-8-1002, an offense that meets the definition of aggravated driving under the influence in
15 61-8-1001, or a similar offense under previous laws of this state or the laws of another state, or the suspension
16 was under 61-8-1016 or a similar law of another state for refusal to take a test for alcohol or drugs requested by
17 a peace officer who believed that the person might be driving under the influence, in addition to the
18 punishments listed in 61-8-1002 and 61-8-1007, the court shall require the person:

19 (a) to participate in the 24/7 sobriety and drug monitoring program provided for in 44-4-1203 or
20 require the person to participate in a court-approved alcohol or drug detection testing program and to pay the
21 fees associated with the program;

22 (b) if recommending that a probationary license be issued to the person, restrict the person to
23 driving only a motor vehicle equipped with a functioning ignition interlock device during the probationary period
24 and require the person to pay the reasonable cost of leasing, installing, and maintaining the device; or

25 (c) order that each motor vehicle owned by the person at the time of the offense be seized and
26 subjected to the forfeiture procedure provided under 61-8-1033. A vehicle used by a person as a common
27 carrier in the transaction of business as a common carrier is not subject to forfeiture unless it appears that the
28 owner or other person in charge of the vehicle consented to or was privy to the violation. A vehicle may not be

1 forfeited under this section for any act or omission established by the owner to have been committed or omitted
2 by a person other than the owner while the vehicle was unlawfully in the possession of a person other than the
3 owner in violation of the criminal laws of this state or the United States. Forfeiture of a vehicle encumbered by a
4 security interest is subject to the secured person's interest if the person did not know and could not have
5 reasonably known of the unlawful possession, use, or other act on which the forfeiture is sought.

6 (3) All court-approved alcohol or drug detection testing programs allowed under this section are
7 required to use the state's data management system pursuant to 44-4-1203."
8

9 **Section 3.** Section 61-8-1016, MCA, is amended to read:

10 **"61-8-1016. Implied consent -- blood or breath tests for alcohol, blood or oral fluid for drugs, or**
11 **testing for both -- alcohol and drugs using recognized methods for each -- refusal to submit to test --**
12 **administrative license suspension.** (1) (a) A person who operates or is in actual physical control of a vehicle
13 or commercial motor vehicle upon the ways of this state open to the public is considered to have given consent
14 to a test or tests of the person's blood or breath for the purpose of determining any measured amount or
15 detected presence of alcohol or blood or oral fluid for the purpose of determining any measured amount or
16 detected presence of drugs in the person's body.

17 (b) The tests in subsection (1)(a) include but are not limited to a preliminary alcohol screening test
18 of the person's breath for the purpose of estimating the person's alcohol concentration.

19 (c) A preliminary alcohol screening test may not be conducted or requested under this section
20 unless both the peace officer and the instrument used to conduct the test have been certified by the department
21 pursuant to rules adopted under the authority of 61-8-1019(5).

22 (d) The person's obligation to submit to a test in subsection (1)(a) is not satisfied by the person
23 submitting to a preliminary alcohol screening test pursuant to this section.

24 (2) (a) The test or tests must be administered at the direction of a peace officer when:

25 (i) the peace officer has particularized suspicion to believe that the person has been driving or has
26 been in actual physical control of a vehicle upon ways of this state open to the public while under the influence
27 of alcohol, drugs, or a combination of the two and the person has been detained for a violation of driving under
28 the influence as provided in 61-8-1002 or an offense that meets the definition of aggravated driving under the

1 influence in 61-8-1001;

2 (ii) the person is under the age of 21 and the peace officer has particularized suspicion to believe
3 that the person has been driving or in actual physical control of a vehicle in violation of 61-8-1002(1)(e); or

4 (iii) the peace officer has probable cause to believe that the person was driving or in actual
5 physical control of a vehicle or commercial motor vehicle:

6 (A) in violation of driving under the influence, as provided in 61-8-1002, and the person has been
7 placed under arrest;

8 (B) in violation of driving under the influence as provided in 61-8-1002, and the person has been
9 involved in a motor vehicle crash or collision resulting in property damage;

10 (C) and the person has been involved in a motor vehicle accident or collision resulting in serious
11 bodily injury, as defined in 45-2-101, or death; or

12 (D) in violation of driving under the influence as provided in 61-8-1002 and meets the definition of
13 aggravated driving under the influence in 61-8-1001.

14 (b) A peace officer may designate which test or tests are administered.

15 (c) The peace officer shall inform the person of the right to refuse the test and that the refusal to
16 submit to the test will result in the suspension for up to 1 year of that person's driver's license.

17 (d) A hearing as provided for in 61-8-1017 must be available. The issues in the hearing must be
18 limited to determining whether a peace officer had a particularized suspicion that the person was in violation of
19 61-8-1002 or an offense meeting the definition of aggravated driving under the influence in 61-8-1001, and
20 whether the person refused to submit to the test.

21 (e) If a person refuses a preliminary alcohol screening test and another test during the same
22 incident, the department may not consider each a separate refusal for purposes of suspension of the person's
23 driver's license.

24 (3) A person who is unconscious or who is otherwise in a condition rendering the person incapable
25 of refusal is considered not to have withdrawn the consent requested in subsection (1).

26 (4) (a) If an arrested person refuses to submit to one or more tests requested and designated by
27 the peace officer, the refused test or tests may not be given unless the person has refused to provide a breath,
28 blood, urine, or other bodily substance in a prior investigation in this state or under a substantially similar statute

1 in another jurisdiction or the arrested person has a prior conviction or pending offense for a violation of 45-5-
2 104, 45-5-106, 45-5-205, or driving under the influence, including 61-8-1002, an offense that meets the
3 definition of aggravated driving under the influence in 61-8-1001, or a similar offense under previous laws of
4 this state or a similar statute in another jurisdiction.

5 (b) ~~Upon~~On the person's refusal to provide the breath, blood, urine, oral fluid, or other bodily
6 substance requested by the peace officer pursuant to subsection (1) and this subsection (4) may apply for a
7 search warrant to be issued pursuant to 46-5-224 to collect a sample of the person's blood or oral fluid for
8 testing.

9 (c) (i) ~~Upon~~On the person's refusal to provide a breath, blood, urine, oral fluid, or other bodily
10 substance, the peace officer shall, on behalf of the department, immediately seize the person's driver's license.
11 The peace officer shall immediately forward the license to the department, along with a report certified under
12 penalty of law stating which of the conditions set forth in subsection (2)(a) provides the basis for the testing
13 request and confirming that the person refused to submit to one or more tests requested and designated by the
14 peace officer. Upon receipt of the report, the department shall suspend the license for the period provided in
15 61-8-1032.

16 (ii) Upon seizure of a driver's license, the peace officer shall issue, on behalf of the department, a
17 temporary driving permit, which is effective 12 hours after issuance and is valid for 5 days following the date of
18 issuance, and shall provide the driver with written notice of the license suspension and the right to a hearing as
19 provided in 61-8-1017.

20 (iii) A nonresident driver's license seized under this section must be sent by the department to the
21 licensing authority of the nonresident's home state with a report of the nonresident's refusal to submit to one or
22 more tests.

23 (5) This section does not apply to tests, samples, and analyses of blood ~~or~~ breath, or urine used
24 for purposes of medical treatment or care of an injured motorist, related to a lawful seizure for a suspected
25 violation of an offense not in this part, or performed pursuant to a search warrant.

26 (6) This section does not prohibit the release of information obtained from tests, samples, and
27 analyses of blood ~~or~~ breath, or urine for law enforcement purposes as provided in 46-4-301 and 61-8-1019(6)."
28

1 **Section 4.** Section 61-8-1018, MCA, is amended to read:

2 **"61-8-1018. Evidence admissible -- conditions of admissibility.** (1) Upon the trial of a criminal
3 action or other proceeding arising out of acts alleged to have been committed by a person in violation of driving
4 under the influence, including 61-8-1002, an offense that meets the definition of aggravated driving under the
5 influence in 61-8-1001, a similar offense under previous laws of this state or the laws of another state, or 61-8-
6 805:

7 (a) evidence of any measured amount or detected presence of alcohol, drugs, or a combination of
8 alcohol and drugs in the person at the time of a test, as shown by an analysis of the person's blood ~~or~~, breath,
9 or oral fluid is admissible. A positive test result does not, in itself, prove that the person was under the influence
10 of a drug or drugs at the time the person was in control of a vehicle. A person may not be convicted of a
11 violation of 61-8-1002(1)(a) based on the presence of a drug or drugs in the person unless some other
12 competent evidence exists that tends to establish that the person was under the influence of a drug or drugs
13 while driving or in actual physical control of a motor vehicle within this state.

14 (b) a report of the facts and results of one or more tests of a person's blood ~~or~~, breath, or oral fluid
15 is admissible in evidence if:

16 (i) a breath test, oral fluid screening test, or preliminary alcohol screening test was performed by a
17 person certified by the forensic sciences division of the department to administer the test; or

18 (ii) a blood sample was analyzed in a laboratory operated or certified by the department or in a
19 laboratory exempt from certification under the rules of the department and the blood was withdrawn from the
20 person by a person competent to do so under 61-8-1019(1); and

21 (c) a report of the facts and results of a physical, psychomotor, or physiological assessment of a
22 person is admissible in evidence if it was made by a person trained by the department or by a person who has
23 received training recognized by the department.

24 (2) If the person under arrest refused to submit to one or more tests under 61-8-1016, whether or
25 not a sample was subsequently collected for any purpose, proof of refusal is admissible in any criminal action
26 or proceeding arising out of acts alleged to have been committed while the person was driving or in actual
27 physical control of a vehicle upon the ways of this state open to the public while under the influence of alcohol,
28 drugs, or a combination of alcohol and drugs. The trier of fact may infer from the refusal that the person was

1 under the influence. The inference is rebuttable.

2 (3) The provisions of this part do not limit the introduction of any other competent evidence bearing
3 on the question of whether the person was under the influence of alcohol, drugs, or a combination of alcohol
4 and drugs."

5

6 **Section 5.** Section 61-8-1019, MCA, is amended to read:

7 **"61-8-1019. Administration of tests.** (1) Only a licensed physician, registered nurse, or other
8 qualified person acting under the supervision and direction of a physician or registered nurse may, at the
9 request of a peace officer, withdraw blood for the purpose of determining any measured amount or detected
10 presence of alcohol, drugs, or any combination of alcohol and drugs in the person. This limitation does not
11 apply to the sampling of breath.

12 (2) In addition to any test administered at the direction of a peace officer, a person may request
13 that an independent blood sample be drawn by a physician or registered nurse for the purpose of determining
14 any measured amount or detected presence of alcohol, drugs, or any combination of alcohol and drugs in the
15 person. The peace officer may not unreasonably impede the person's right to obtain an independent blood test.
16 The peace officer may but has no duty to transport the person to a medical facility or otherwise assist the
17 person in obtaining the test. The cost of an independent blood test is the sole responsibility of the person
18 requesting the test. The failure or inability to obtain an independent test by a person does not preclude the
19 admissibility in evidence of any test given at the direction of a peace officer.

20 (3) Upon the request of the person tested, full information concerning any test given at the
21 direction of the peace officer must be made available to the person or the person's attorney.

22 (4) A physician, registered nurse, or other qualified person acting under the supervision and
23 direction of a physician or registered nurse does not incur any civil or criminal liability as a result of the proper
24 administering of a blood test when requested in writing by a peace officer to administer a test.

25 (5) The department in cooperation with any appropriate agency shall adopt uniform rules for the
26 giving of tests and may require certification of training to administer the tests as considered necessary.

27 (6) If a peace officer has probable cause to believe that a person has violated 61-8-1002, meets
28 the definition of aggravated driving under the influence as defined in 61-8-1001, or has violated 61-8-805 and a

1 sample of blood, breath, oral fluid, urine, or other bodily substance is taken from that person for any reason, a
2 portion of that sample sufficient for analysis must be provided to a peace officer if requested for law
3 enforcement purposes and upon issuance of a subpoena as provided in 46-4-301."

4
5 **Section 6.** Section 61-8-1032, MCA, is amended to read:

6 **"61-8-1032. Mandatory suspension of license following certain implied consent action.** (1) The
7 department shall suspend an individual's driver license if the department receives a report for an implied
8 consent violation from law enforcement or another reporting jurisdiction that, pursuant to 61-8-1016, an
9 individual has refused a test or tests of the person's blood, breath, oral fluid, urine, or other bodily substance for
10 determining any measured amount or detected presence of alcohol or drugs in the person's body.

11 (2) (a) Except as permitted by law, a person whose license or privilege to drive a motor vehicle on
12 the public highways has been suspended may not have the license or privilege renewed or restored until the
13 revocation or suspension duration has been completed.

14 (b) The department shall apply the appropriate sanction to the driver based on the reported
15 conviction and prior offenses.

16 (c) The driver shall pay all reinstatement and administrative fees owed to the department before a
17 driver's license or privilege to drive is restored.

18 (d) The duration of the suspension commences from the date of violation.

19 (e) If a person refuses tests for the same incident, the department may not consider each a
20 separate refusal for purposes of suspension.

21 (f) The department may not issue a probationary license during the suspension issued under this
22 part.

23 (3) (a) A person who has an implied consent violation shall pay the department an administrative
24 fee of \$300, which must be deposited in the state special revenue account established pursuant to subsection
25 (3)(b).

26 (b) There is a blood-draw search warrant processing account in the state special revenue fund
27 established pursuant to 17-2-102(1)(b). Money provided to the department of justice pursuant to this subsection
28 (3) must be deposited in the account and may be used only for providing forensic analysis of a driver's blood or

1 breath to determine the presence of alcohol or drugs.

2 (4) (a) Upon receiving a report of an implied consent violation, the department shall:

3 (i) for a first violation, suspend the driver's license or driving privilege for 6 months with no
4 provision for a restricted probationary license; or

5 (ii) for a second or subsequent violation within 5 years of a previous refusal, as determined from
6 the records of the department, suspend the driver's license or driving privilege for 1 year with no provision for a
7 restricted probationary license.

8 (b) If a person who refuses to submit to one or more tests under this section is the holder of a
9 commercial driver's license, in addition to any action taken against the driver's noncommercial driving
10 privileges, the department shall:

11 (i) upon a first refusal, suspend the person's commercial driver's license for 1 year; and

12 (ii) upon a second or subsequent refusal, suspend the person's commercial driver's license for life,
13 subject to department rules adopted to implement federal rules allowing for license reinstatement, if the person
14 is otherwise eligible, upon completion of a minimum suspension period of 10 years. If the person has a prior
15 conviction of a major offense listed in 61-8-802(2) arising from a separate incident, the conviction has the same
16 effect as a previous testing refusal.

17 (5) A nonresident driver's license seized under this section must be sent by the department to the
18 licensing authority of the nonresident's home state with a report of the nonresident's refusal to submit to one or
19 more tests.

20 (6) The department may recognize the seizure of a license of a tribal member by a peace officer
21 acting under the authority of a tribal government or an order issued by a tribal court suspending, revoking, or
22 reinstating a license or adjudicating a license seizure if the actions are conducted pursuant to tribal law or
23 regulation requiring alcohol or drug testing of motor vehicle operators and the conduct giving rise to the actions
24 occurred within the exterior boundaries of a federally recognized Indian reservation in this state. Action by the
25 department under this subsection is not reviewable under 61-8-1017."

26

27 **Section 7.** Section 67-1-211, MCA, is amended to read:

28 **"67-1-211. Alcohol concentration standards -- evidence admissible -- administration of tests.**

(1) If a person acting or attempting to act as a crewmember of an aircraft has an alcohol concentration, as defined in 61-8-1001, of 0.04% by weight or more, it may be inferred that the person is under the influence of alcohol and is in violation of 67-1-204.

(2) Evidence of any measured amount or detected presence of alcohol in the person at the time of the act alleged under subsection (1) and any other competent evidence bearing on the question of whether the person was under the influence of alcohol, drugs, or a combination of the two at the time of the act alleged is admissible in any criminal action or proceeding arising out of acts alleged to have been committed in violation of 67-1-204.

(3) In any criminal action or proceeding arising out of acts alleged to have been committed in violation of 67-1-204, the court or jury may consider federal regulations governing aeronautics.

(4) A person who operates an aircraft over the lands and waters of this state is considered to have given consent to a test of the person's blood, breath, oral fluid, or urine for the purpose of determining any measured amount or detected presence of alcohol or drugs in the person's body if arrested by a peace officer for operating, attempting to operate, or being in actual physical control of an aircraft while under the influence of alcohol, drugs, or a combination of the two. The test must be administered at the direction of a peace officer who has reasonable grounds to believe the person was operating, attempting to operate, or in actual physical control of an aircraft while under the influence of alcohol, drugs, or a combination of the two. The arresting officer may designate which of the tests must be administered. A person who is unconscious or who is otherwise in a condition rendering the person incapable of refusal is considered not to have withdrawn the consent provided by this subsection.

(5) If a person charged with a violation of 67-1-204 refuses to submit to a test of the person's blood, breath, oral fluid, or urine for the purpose of determining any measured amount or detected presence of alcohol in the person's body, a test will not be given, but proof of refusal is admissible in any criminal action or proceeding arising out of acts alleged to have been committed in violation of 67-1-204.

(6) The provisions relating to administration of tests provided in 61-8-1019 and the definition of alcohol concentration provided in 61-8-1001 apply to any testing done to determine any measured amount or detected presence of alcohol in a person and the alcohol concentration of a person charged with violation of 67-1-204."

2 NEW SECTION. **Section 8.** **Effective date.** [This act] is effective on passage and approval.

3 - END -

SENATE BILL NO. 13

INTRODUCED BY K. REGIER

BY REQUEST OF THE LAW AND JUSTICE INTERIM COMMITTEE

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING ADDITIONAL TYPES OF BODILY FLUIDS TO TEST FOR THE PRESENCE OF DRUGS IN DRIVING WHILE UNDER THE INFLUENCE CASES; AMENDING SECTIONS 23-2-535, 61-8-1010, 61-8-1016, 61-8-1018, 61-8-1019, 61-8-1032, AND 67-1-211, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

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"23-2-535. Alcohol concentration standards -- evidence admissible -- administration of tests.

(1) The inferences contained in 61-8-1002 apply to any criminal action or proceeding arising out of acts alleged to have been committed in violation of 23-2-523(2).

(2) Evidence of any measured amount or detected presence of alcohol or drugs in a person at the time of the act alleged, as shown by analysis of the person's blood, breath, oral fluid, or urine, and any other competent evidence bearing on the question of whether the person was under the influence of alcohol, drugs, or a combination of the two at the time of the act alleged is admissible in any criminal action or proceeding arising out of acts alleged to have been committed in violation of 23-2-523(2).

(3) If a person charged with violation of 23-2-523(2) refuses to submit to a test of the person's blood, breath, or urine for the purpose of determining any measured amount or detected presence of alcohol, none will be given, but proof of refusal is admissible in any criminal action or proceeding arising out of acts alleged to have been committed in violation of 23-2-523(2).

(4) The provisions relating to administration of tests provided in 61-8-1019 and the definition of alcohol concentration provided in 61-8-1001 apply to any testing done to a person charged with violation of 23-2-523(2).

(5) As used in 23-2-523(2), the term "under the influence" has the meaning provided in 61-8-

1 1001."

2

3 **Section 2.** Section 61-8-1010, MCA, is amended to read:

4 **"61-8-1010. Driving under influence -- ignition interlock device -- 24/7 sobriety and drug**

5 **monitoring program.** (1) For a person convicted of a first offense of driving under the influence, including 61-
6 8-1002, an offense that meets the definition of aggravated driving under the influence in 61-8-1001, or a similar
7 offense under the laws of another state, in addition to the punishments listed in 61-8-1007, the court may,
8 regardless of disposition and if a probationary license is recommended by the court, require the person to
9 comply with the conditions listed in subsection (2)(a) or (2)(b).

10 (2) On a second or subsequent conviction for a violation of driving under the influence, including
11 61-8-1002, an offense that meets the definition of aggravated driving under the influence in 61-8-1001, or a
12 similar offense under the laws of another state, or a second or subsequent conviction under 61-5-212 when the
13 reason for the suspension or revocation was that the person was convicted of a violation of driving under the
14 influence, including 61-8-1002, an offense that meets the definition of aggravated driving under the influence in
15 61-8-1001, or a similar offense under previous laws of this state or the laws of another state, or the suspension
16 was under 61-8-1016 or a similar law of another state for refusal to take a test for alcohol or drugs requested by
17 a peace officer who believed that the person might be driving under the influence, in addition to the
18 punishments listed in 61-8-1002 and 61-8-1007, the court shall ~~require the person~~:

19 (a) REQUIRE THE PERSON to participate in the 24/7 sobriety and drug monitoring program provided
20 for in 44-4-1203 or require the person to participate in a court-approved alcohol or drug detection testing
21 program and to pay the fees associated with the program;

22 (b) if recommending that a probationary license be issued to the person, restrict the person to
23 driving only a motor vehicle equipped with a functioning ignition interlock device during the probationary period
24 and require the person to pay the reasonable cost of leasing, installing, and maintaining the device; or

25 (c) order that each motor vehicle owned by the person at the time of the offense be seized and
26 subjected to the forfeiture procedure provided under 61-8-1033. A vehicle used by a person as a common
27 carrier in the transaction of business as a common carrier is not subject to forfeiture unless it appears that the
28 owner or other person in charge of the vehicle consented to or was privy to the violation. A vehicle may not be

1 forfeited under this section for any act or omission established by the owner to have been committed or omitted
2 by a person other than the owner while the vehicle was unlawfully in the possession of a person other than the
3 owner in violation of the criminal laws of this state or the United States. Forfeiture of a vehicle encumbered by a
4 security interest is subject to the secured person's interest if the person did not know and could not have
5 reasonably known of the unlawful possession, use, or other act on which the forfeiture is sought.

6 (3) All court-approved alcohol or drug detection testing programs allowed under this section are
7 required to use the state's data management system pursuant to 44-4-1203."
8

9 **Section 3.** Section 61-8-1016, MCA, is amended to read:

10 **"61-8-1016. Implied consent -- blood or breath tests for alcohol, blood or oral fluid for drugs, or**
11 **testing for both -- alcohol and drugs using recognized methods for each -- refusal to submit to test --**
12 **administrative license suspension.** (1) (a) A person who operates or is in actual physical control of a vehicle
13 or commercial motor vehicle upon the ways of this state open to the public is considered to have given consent
14 to a test or tests of the person's blood or breath for the purpose of determining any measured amount or
15 detected presence of alcohol or blood or oral fluid for the purpose of determining any measured amount or
16 detected presence of drugs in the person's body.

17 (b) The tests in subsection (1)(a) include but are not limited to a preliminary alcohol screening test
18 of the person's breath for the purpose of estimating the person's alcohol concentration.

19 (c) A preliminary alcohol screening test may not be conducted or requested under this section
20 unless both the peace officer and the instrument used to conduct the test have been certified by the department
21 pursuant to rules adopted under the authority of 61-8-1019(5).

22 (d) The person's obligation to submit to a test in subsection (1)(a) is not satisfied by the person
23 submitting to a preliminary alcohol screening test pursuant to this section.

24 (2) (a) The test or tests must be administered at the direction of a peace officer when:

25 (i) the peace officer has particularized suspicion to believe that the person has been driving or has
26 been in actual physical control of a vehicle upon ways of this state open to the public while under the influence
27 of alcohol, drugs, or a combination of the two and the person has been detained for a violation of driving under
28 the influence as provided in 61-8-1002 or an offense that meets the definition of aggravated driving under the

1 influence in 61-8-1001;

2 (ii) the person is under the age of 21 and the peace officer has particularized suspicion to believe
3 that the person has been driving or in actual physical control of a vehicle in violation of 61-8-1002(1)(e); or

4 (iii) the peace officer has probable cause to believe that the person was driving or in actual
5 physical control of a vehicle or commercial motor vehicle:

6 (A) in violation of driving under the influence, as provided in 61-8-1002, and the person has been
7 placed under arrest;

8 (B) in violation of driving under the influence as provided in 61-8-1002, and the person has been
9 involved in a motor vehicle crash or collision resulting in property damage;

10 (C) and the person has been involved in a motor vehicle accident or collision resulting in serious
11 bodily injury, as defined in 45-2-101, or death; or

12 (D) in violation of driving under the influence as provided in 61-8-1002 and meets the definition of
13 aggravated driving under the influence in 61-8-1001.

14 (b) A peace officer may designate which test or tests are administered.

15 (c) The peace officer shall inform the person of the right to refuse the test and that the refusal to
16 submit to the test will result in the suspension for up to 1 year of that person's driver's license.

17 (d) A hearing as provided for in 61-8-1017 must be available. The issues in the hearing must be
18 limited to determining whether a peace officer had a particularized suspicion that the person was in violation of
19 61-8-1002 or an offense meeting the definition of aggravated driving under the influence in 61-8-1001, and
20 whether the person refused to submit to the test.

21 (e) If a person refuses a preliminary alcohol screening test and another test during the same
22 incident, the department may not consider each a separate refusal for purposes of suspension of the person's
23 driver's license.

24 (3) A person who is unconscious or who is otherwise in a condition rendering the person incapable
25 of refusal is considered not to have withdrawn the consent requested in subsection (1).

26 (4) (a) If an arrested person refuses to submit to one or more tests requested and designated by
27 the peace officer, the refused test or tests may not be given unless the person has refused to provide a breath,
28 blood, urine, or other bodily substance in a prior investigation in this state or under a substantially similar statute

1 in another jurisdiction or the arrested person has a prior conviction or pending offense for a violation of 45-5-
2 104, 45-5-106, 45-5-205, or driving under the influence, including 61-8-1002, an offense that meets the
3 definition of aggravated driving under the influence in 61-8-1001, or a similar offense under previous laws of
4 this state or a similar statute in another jurisdiction.

5 (b) ~~Upon~~On the person's refusal to provide the breath, blood, urine, oral fluid, or other bodily
6 substance requested by the peace officer pursuant to subsection (1) and this subsection (4) may apply for a
7 search warrant to be issued pursuant to 46-5-224 to collect a sample of the person's blood or oral fluid for
8 testing.

9 (c) (i) ~~Upon~~On the person's refusal to provide a breath, blood, urine, oral fluid, or other bodily
10 substance, the peace officer shall, on behalf of the department, immediately seize the person's driver's license.
11 The peace officer shall immediately forward the license to the department, along with a report certified under
12 penalty of law stating which of the conditions set forth in subsection (2)(a) provides the basis for the testing
13 request and confirming that the person refused to submit to one or more tests requested and designated by the
14 peace officer. Upon receipt of the report, the department shall suspend the license for the period provided in
15 61-8-1032.

16 (ii) Upon seizure of a driver's license, the peace officer shall issue, on behalf of the department, a
17 temporary driving permit, which is effective 12 hours after issuance and is valid for 5 days following the date of
18 issuance, and shall provide the driver with written notice of the license suspension and the right to a hearing as
19 provided in 61-8-1017.

20 (iii) A nonresident driver's license seized under this section must be sent by the department to the
21 licensing authority of the nonresident's home state with a report of the nonresident's refusal to submit to one or
22 more tests.

23 (5) This section does not apply to tests, samples, and analyses of blood ~~or~~, breath, or urine used
24 for purposes of medical treatment or care of an injured motorist, related to a lawful seizure for a suspected
25 violation of an offense not in this part, or performed pursuant to a search warrant.

26 (6) This section does not prohibit the release of information obtained from tests, samples, and
27 analyses of blood ~~or~~, breath, or urine for law enforcement purposes as provided in 46-4-301 and 61-8-1019(6)."

28

1 **Section 4.** Section 61-8-1018, MCA, is amended to read:

2 **"61-8-1018. Evidence admissible -- conditions of admissibility.** (1) Upon the trial of a criminal
3 action or other proceeding arising out of acts alleged to have been committed by a person in violation of driving
4 under the influence, including 61-8-1002, an offense that meets the definition of aggravated driving under the
5 influence in 61-8-1001, a similar offense under previous laws of this state or the laws of another state, or 61-8-
6 805:

7 (a) evidence of any measured amount or detected presence of alcohol, drugs, or a combination of
8 alcohol and drugs in the person at the time of a test, as shown by an analysis of the person's blood ~~or~~, breath,
9 or oral fluid is admissible. A positive test result does not, in itself, prove that the person was under the influence
10 of a drug or drugs at the time the person was in control of a vehicle. A person may not be convicted of a
11 violation of 61-8-1002(1)(a) based on the presence of a drug or drugs in the person unless some other
12 competent evidence exists that tends to establish that the person was under the influence of a drug or drugs
13 while driving or in actual physical control of a motor vehicle within this state.

14 (b) a report of the facts and results of one or more tests of a person's blood ~~or~~, breath, or oral fluid
15 is admissible in evidence if:

16 (i) a breath test, oral fluid screening test, or preliminary alcohol screening test was performed by a
17 person certified by the forensic sciences division of the department to administer the test; or

18 (ii) a blood sample was analyzed in a laboratory operated or certified by the department or in a
19 laboratory exempt from certification under the rules of the department and the blood was withdrawn from the
20 person by a person competent to do so under 61-8-1019(1); and

21 (c) a report of the facts and results of a physical, psychomotor, or physiological assessment of a
22 person is admissible in evidence if it was made by a person trained by the department or by a person who has
23 received training recognized by the department.

24 (2) If the person under arrest refused to submit to one or more tests under 61-8-1016, whether or
25 not a sample was subsequently collected for any purpose, proof of refusal is admissible in any criminal action
26 or proceeding arising out of acts alleged to have been committed while the person was driving or in actual
27 physical control of a vehicle upon the ways of this state open to the public while under the influence of alcohol,
28 drugs, or a combination of alcohol and drugs. The trier of fact may infer from the refusal that the person was

1 under the influence. The inference is rebuttable.

2 (3) The provisions of this part do not limit the introduction of any other competent evidence bearing
3 on the question of whether the person was under the influence of alcohol, drugs, or a combination of alcohol
4 and drugs."

5

6 **Section 5.** Section 61-8-1019, MCA, is amended to read:

7 **"61-8-1019. Administration of tests.** (1) Only a licensed physician, registered nurse, or other
8 qualified person acting under the supervision and direction of a physician or registered nurse may, at the
9 request of a peace officer, withdraw blood for the purpose of determining any measured amount or detected
10 presence of alcohol, drugs, or any combination of alcohol and drugs in the person. This limitation does not
11 apply to the sampling of breath OR ORAL FLUID.

12 (2) In addition to any test administered at the direction of a peace officer, a person may request
13 that an independent blood sample be drawn by a physician or registered nurse for the purpose of determining
14 any measured amount or detected presence of alcohol, drugs, or any combination of alcohol and drugs in the
15 person. The peace officer may not unreasonably impede the person's right to obtain an independent blood test.
16 The peace officer may but has no duty to transport the person to a medical facility or otherwise assist the
17 person in obtaining the test. The cost of an independent blood test is the sole responsibility of the person
18 requesting the test. The failure or inability to obtain an independent test by a person does not preclude the
19 admissibility in evidence of any test given at the direction of a peace officer.

20 (3) Upon the request of the person tested, full information concerning any test given at the
21 direction of the peace officer must be made available to the person or the person's attorney.

22 (4) A physician, registered nurse, or other qualified person acting under the supervision and
23 direction of a physician or registered nurse does not incur any civil or criminal liability as a result of the proper
24 administering of a blood test when requested in writing by a peace officer to administer a test.

25 (5) The department in cooperation with any appropriate agency shall adopt uniform rules for the
26 giving of tests and may require certification of training to administer the tests as considered necessary.

27 (6) If a peace officer has probable cause to believe that a person has violated 61-8-1002, meets
28 the definition of aggravated driving under the influence as defined in 61-8-1001, or has violated 61-8-805 and a

1 sample of blood, breath, oral fluid, urine, or other bodily substance is taken from that person for any reason, a
2 portion of that sample sufficient for analysis must be provided to a peace officer if requested for law
3 enforcement purposes and upon issuance of a subpoena as provided in 46-4-301."

4
5 **Section 6.** Section 61-8-1032, MCA, is amended to read:

6 **"61-8-1032. Mandatory suspension of license following certain implied consent action.** (1) The
7 department shall suspend an individual's driver license if the department receives a report for an implied
8 consent violation from law enforcement or another reporting jurisdiction that, pursuant to 61-8-1016, an
9 individual has refused a test or tests of the person's blood, breath, oral fluid, urine, or other bodily substance for
10 determining any measured amount or detected presence of alcohol or drugs in the person's body.

11 (2) (a) Except as permitted by law, a person whose license or privilege to drive a motor vehicle on
12 the public highways has been suspended may not have the license or privilege renewed or restored until the
13 revocation or suspension duration has been completed.

14 (b) The department shall apply the appropriate sanction to the driver based on the reported
15 conviction and prior offenses.

16 (c) The driver shall pay all reinstatement and administrative fees owed to the department before a
17 driver's license or privilege to drive is restored.

18 (d) The duration of the suspension commences from the date of violation.

19 (e) If a person refuses tests for the same incident, the department may not consider each a
20 separate refusal for purposes of suspension.

21 (f) The department may not issue a probationary license during the suspension issued under this
22 part.

23 (3) (a) A person who has an implied consent violation shall pay the department an administrative
24 fee of \$300, which must be deposited in the state special revenue account established pursuant to subsection
25 (3)(b).

26 (b) There is a blood-draw search warrant processing account in the state special revenue fund
27 established pursuant to 17-2-102(1)(b). Money provided to the department of justice pursuant to this subsection

28 (3) must be deposited in the account and may be used only for providing forensic analysis of a driver's blood or

1 breath to determine the presence of alcohol or drugs.

2 (4) (a) Upon receiving a report of an implied consent violation, the department shall:

3 (i) for a first violation, suspend the driver's license or driving privilege for 6 months with no
4 provision for a restricted probationary license; or

5 (ii) for a second or subsequent violation within 5 years of a previous refusal, as determined from
6 the records of the department, suspend the driver's license or driving privilege for 1 year with no provision for a
7 restricted probationary license.

8 (b) If a person who refuses to submit to one or more tests under this section is the holder of a
9 commercial driver's license, in addition to any action taken against the driver's noncommercial driving
10 privileges, the department shall:

11 (i) upon a first refusal, suspend the person's commercial driver's license for 1 year; and

12 (ii) upon a second or subsequent refusal, suspend the person's commercial driver's license for life,
13 subject to department rules adopted to implement federal rules allowing for license reinstatement, if the person
14 is otherwise eligible, upon completion of a minimum suspension period of 10 years. If the person has a prior
15 conviction of a major offense listed in 61-8-802(2) arising from a separate incident, the conviction has the same
16 effect as a previous testing refusal.

17 (5) A nonresident driver's license seized under this section must be sent by the department to the
18 licensing authority of the nonresident's home state with a report of the nonresident's refusal to submit to one or
19 more tests.

20 (6) The department may recognize the seizure of a license of a tribal member by a peace officer
21 acting under the authority of a tribal government or an order issued by a tribal court suspending, revoking, or
22 reinstating a license or adjudicating a license seizure if the actions are conducted pursuant to tribal law or
23 regulation requiring alcohol or drug testing of motor vehicle operators and the conduct giving rise to the actions
24 occurred within the exterior boundaries of a federally recognized Indian reservation in this state. Action by the
25 department under this subsection is not reviewable under 61-8-1017."

26

27 **Section 7.** Section 67-1-211, MCA, is amended to read:

28 **"67-1-211. Alcohol concentration standards -- evidence admissible -- administration of tests.**

(1) If a person acting or attempting to act as a crewmember of an aircraft has an alcohol concentration, as defined in 61-8-1001, of 0.04% by weight or more, it may be inferred that the person is under the influence of alcohol and is in violation of 67-1-204.

(2) Evidence of any measured amount or detected presence of alcohol in the person at the time of the act alleged under subsection (1) and any other competent evidence bearing on the question of whether the person was under the influence of alcohol, drugs, or a combination of the two at the time of the act alleged is admissible in any criminal action or proceeding arising out of acts alleged to have been committed in violation of 67-1-204.

(3) In any criminal action or proceeding arising out of acts alleged to have been committed in violation of 67-1-204, the court or jury may consider federal regulations governing aeronautics.

(4) A person who operates an aircraft over the lands and waters of this state is considered to have given consent to a test of the person's blood, breath, oral fluid, or urine for the purpose of determining any measured amount or detected presence of alcohol or drugs in the person's body if arrested by a peace officer for operating, attempting to operate, or being in actual physical control of an aircraft while under the influence of alcohol, drugs, or a combination of the two. The test must be administered at the direction of a peace officer who has reasonable grounds to believe the person was operating, attempting to operate, or in actual physical control of an aircraft while under the influence of alcohol, drugs, or a combination of the two. The arresting officer may designate which of the tests must be administered. A person who is unconscious or who is otherwise in a condition rendering the person incapable of refusal is considered not to have withdrawn the consent provided by this subsection.

(5) If a person charged with a violation of 67-1-204 refuses to submit to a test of the person's blood, breath, oral fluid, or urine for the purpose of determining any measured amount or detected presence of alcohol in the person's body, a test will not be given, but proof of refusal is admissible in any criminal action or proceeding arising out of acts alleged to have been committed in violation of 67-1-204.

(6) The provisions relating to administration of tests provided in 61-8-1019 and the definition of alcohol concentration provided in 61-8-1001 apply to any testing done to determine any measured amount or detected presence of alcohol in a person and the alcohol concentration of a person charged with violation of 67-1-204."

3 - END -



AN ACT PROVIDING ADDITIONAL TYPES OF BODILY FLUIDS TO TEST FOR THE PRESENCE OF DRUGS IN DRIVING WHILE UNDER THE INFLUENCE CASES; AMENDING SECTIONS 23-2-535, 61-8-1010, 61-8-1016, 61-8-1018, 61-8-1019, 61-8-1032, AND 67-1-211, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 23-2-535, MCA, is amended to read:

"23-2-535. Alcohol concentration standards -- evidence admissible -- administration of tests.

(1) The inferences contained in 61-8-1002 apply to any criminal action or proceeding arising out of acts alleged to have been committed in violation of 23-2-523(2).

(2) Evidence of any measured amount or detected presence of alcohol or drugs in a person at the time of the act alleged, as shown by analysis of the person's blood, breath, oral fluid, or urine, and any other competent evidence bearing on the question of whether the person was under the influence of alcohol, drugs, or a combination of the two at the time of the act alleged is admissible in any criminal action or proceeding arising out of acts alleged to have been committed in violation of 23-2-523(2).

(3) If a person charged with violation of 23-2-523(2) refuses to submit to a test of the person's blood, breath, or urine for the purpose of determining any measured amount or detected presence of alcohol, none will be given, but proof of refusal is admissible in any criminal action or proceeding arising out of acts alleged to have been committed in violation of 23-2-523(2).

(4) The provisions relating to administration of tests provided in 61-8-1019 and the definition of alcohol concentration provided in 61-8-1001 apply to any testing done to a person charged with violation of 23-2-523(2).

(5) As used in 23-2-523(2), the term "under the influence" has the meaning provided in 61-8-

1001."

Section 2. Section 61-8-1010, MCA, is amended to read:

"61-8-1010. Driving under influence -- ignition interlock device -- 24/7 sobriety and drug monitoring program. (1) For a person convicted of a first offense of driving under the influence, including 61-8-1002, an offense that meets the definition of aggravated driving under the influence in 61-8-1001, or a similar offense under the laws of another state, in addition to the punishments listed in 61-8-1007, the court may, regardless of disposition and if a probationary license is recommended by the court, require the person to comply with the conditions listed in subsection (2)(a) or (2)(b).

(2) On a second or subsequent conviction for a violation of driving under the influence, including 61-8-1002, an offense that meets the definition of aggravated driving under the influence in 61-8-1001, or a similar offense under the laws of another state, or a second or subsequent conviction under 61-5-212 when the reason for the suspension or revocation was that the person was convicted of a violation of driving under the influence, including 61-8-1002, an offense that meets the definition of aggravated driving under the influence in 61-8-1001, or a similar offense under previous laws of this state or the laws of another state, or the suspension was under 61-8-1016 or a similar law of another state for refusal to take a test for alcohol or drugs requested by a peace officer who believed that the person might be driving under the influence, in addition to the punishments listed in 61-8-1002 and 61-8-1007, the court shall ~~require the person~~:

(a) require the person to participate in the 24/7 sobriety and drug monitoring program provided for in 44-4-1203 or require the person to participate in a court-approved alcohol or drug detection testing program and to pay the fees associated with the program;

(b) if recommending that a probationary license be issued to the person, restrict the person to driving only a motor vehicle equipped with a functioning ignition interlock device during the probationary period and require the person to pay the reasonable cost of leasing, installing, and maintaining the device; or

(c) order that each motor vehicle owned by the person at the time of the offense be seized and subjected to the forfeiture procedure provided under 61-8-1033. A vehicle used by a person as a common carrier in the transaction of business as a common carrier is not subject to forfeiture unless it appears that the owner or other person in charge of the vehicle consented to or was privy to the violation. A vehicle may not be

forfeited under this section for any act or omission established by the owner to have been committed or omitted by a person other than the owner while the vehicle was unlawfully in the possession of a person other than the owner in violation of the criminal laws of this state or the United States. Forfeiture of a vehicle encumbered by a security interest is subject to the secured person's interest if the person did not know and could not have reasonably known of the unlawful possession, use, or other act on which the forfeiture is sought.

(3) All court-approved alcohol or drug detection testing programs allowed under this section are required to use the state's data management system pursuant to 44-4-1203."

Section 3. Section 61-8-1016, MCA, is amended to read:

"61-8-1016. Implied consent -- blood or breath tests for alcohol, blood or oral fluid for drugs, or testing for both -- alcohol and drugs using recognized methods for each -- refusal to submit to test -- administrative license suspension. (1) (a) A person who operates or is in actual physical control of a vehicle or commercial motor vehicle upon the ways of this state open to the public is considered to have given consent to a test or tests of the person's blood or breath for the purpose of determining any measured amount or detected presence of alcohol or blood or oral fluid for the purpose of determining any measured amount or detected presence of drugs in the person's body.

(b) The tests in subsection (1)(a) include but are not limited to a preliminary alcohol screening test of the person's breath for the purpose of estimating the person's alcohol concentration.

(c) A preliminary alcohol screening test may not be conducted or requested under this section unless both the peace officer and the instrument used to conduct the test have been certified by the department pursuant to rules adopted under the authority of 61-8-1019(5).

(d) The person's obligation to submit to a test in subsection (1)(a) is not satisfied by the person submitting to a preliminary alcohol screening test pursuant to this section.

(2) (a) The test or tests must be administered at the direction of a peace officer when:

(i) the peace officer has particularized suspicion to believe that the person has been driving or has been in actual physical control of a vehicle upon ways of this state open to the public while under the influence of alcohol, drugs, or a combination of the two and the person has been detained for a violation of driving under the influence as provided in 61-8-1002 or an offense that meets the definition of aggravated driving under the

influence in 61-8-1001;

(ii) the person is under the age of 21 and the peace officer has particularized suspicion to believe that the person has been driving or in actual physical control of a vehicle in violation of 61-8-1002(1)(e); or

(iii) the peace officer has probable cause to believe that the person was driving or in actual physical control of a vehicle or commercial motor vehicle:

(A) in violation of driving under the influence, as provided in 61-8-1002, and the person has been placed under arrest;

(B) in violation of driving under the influence as provided in 61-8-1002, and the person has been involved in a motor vehicle crash or collision resulting in property damage;

(C) and the person has been involved in a motor vehicle accident or collision resulting in serious bodily injury, as defined in 45-2-101, or death; or

(D) in violation of driving under the influence as provided in 61-8-1002 and meets the definition of aggravated driving under the influence in 61-8-1001.

(b) A peace officer may designate which test or tests are administered.

(c) The peace officer shall inform the person of the right to refuse the test and that the refusal to submit to the test will result in the suspension for up to 1 year of that person's driver's license.

(d) A hearing as provided for in 61-8-1017 must be available. The issues in the hearing must be limited to determining whether a peace officer had a particularized suspicion that the person was in violation of 61-8-1002 or an offense meeting the definition of aggravated driving under the influence in 61-8-1001, and whether the person refused to submit to the test.

(e) If a person refuses a preliminary alcohol screening test and another test during the same incident, the department may not consider each a separate refusal for purposes of suspension of the person's driver's license.

(3) A person who is unconscious or who is otherwise in a condition rendering the person incapable of refusal is considered not to have withdrawn the consent requested in subsection (1).

(4) (a) If an arrested person refuses to submit to one or more tests requested and designated by the peace officer, the refused test or tests may not be given unless the person has refused to provide a breath, blood, urine, or other bodily substance in a prior investigation in this state or under a substantially similar statute

in another jurisdiction or the arrested person has a prior conviction or pending offense for a violation of 45-5-104, 45-5-106, 45-5-205, or driving under the influence, including 61-8-1002, an offense that meets the definition of aggravated driving under the influence in 61-8-1001, or a similar offense under previous laws of this state or a similar statute in another jurisdiction.

(b) ~~Upon~~On the person's refusal to provide the breath, blood, urine, oral fluid, or other bodily substance requested by the peace officer pursuant to subsection (1) and this subsection (4) may apply for a search warrant to be issued pursuant to 46-5-224 to collect a sample of the person's blood or oral fluid for testing.

(c) (i) ~~Upon~~On the person's refusal to provide a breath, blood, urine, oral fluid, or other bodily substance, the peace officer shall, on behalf of the department, immediately seize the person's driver's license. The peace officer shall immediately forward the license to the department, along with a report certified under penalty of law stating which of the conditions set forth in subsection (2)(a) provides the basis for the testing request and confirming that the person refused to submit to one or more tests requested and designated by the peace officer. Upon receipt of the report, the department shall suspend the license for the period provided in 61-8-1032.

(ii) Upon seizure of a driver's license, the peace officer shall issue, on behalf of the department, a temporary driving permit, which is effective 12 hours after issuance and is valid for 5 days following the date of issuance, and shall provide the driver with written notice of the license suspension and the right to a hearing as provided in 61-8-1017.

(iii) A nonresident driver's license seized under this section must be sent by the department to the licensing authority of the nonresident's home state with a report of the nonresident's refusal to submit to one or more tests.

(5) This section does not apply to tests, samples, and analyses of blood ~~or~~, breath, or urine used for purposes of medical treatment or care of an injured motorist, related to a lawful seizure for a suspected violation of an offense not in this part, or performed pursuant to a search warrant.

(6) This section does not prohibit the release of information obtained from tests, samples, and analyses of blood ~~or~~, breath, or urine for law enforcement purposes as provided in 46-4-301 and 61-8-1019(6)."

Section 4. Section 61-8-1018, MCA, is amended to read:

"61-8-1018. Evidence admissible -- conditions of admissibility. (1) Upon the trial of a criminal action or other proceeding arising out of acts alleged to have been committed by a person in violation of driving under the influence, including 61-8-1002, an offense that meets the definition of aggravated driving under the influence in 61-8-1001, a similar offense under previous laws of this state or the laws of another state, or 61-8-805:

(a) evidence of any measured amount or detected presence of alcohol, drugs, or a combination of alcohol and drugs in the person at the time of a test, as shown by an analysis of the person's blood ~~or~~, breath, or oral fluid is admissible. A positive test result does not, in itself, prove that the person was under the influence of a drug or drugs at the time the person was in control of a vehicle. A person may not be convicted of a violation of 61-8-1002(1)(a) based on the presence of a drug or drugs in the person unless some other competent evidence exists that tends to establish that the person was under the influence of a drug or drugs while driving or in actual physical control of a motor vehicle within this state.

(b) a report of the facts and results of one or more tests of a person's blood ~~or~~, breath, or oral fluid is admissible in evidence if:

(i) a breath test, oral fluid screening test, or preliminary alcohol screening test was performed by a person certified by the forensic sciences division of the department to administer the test; or

(ii) a blood sample was analyzed in a laboratory operated or certified by the department or in a laboratory exempt from certification under the rules of the department and the blood was withdrawn from the person by a person competent to do so under 61-8-1019(1); and

(c) a report of the facts and results of a physical, psychomotor, or physiological assessment of a person is admissible in evidence if it was made by a person trained by the department or by a person who has received training recognized by the department.

(2) If the person under arrest refused to submit to one or more tests under 61-8-1016, whether or not a sample was subsequently collected for any purpose, proof of refusal is admissible in any criminal action or proceeding arising out of acts alleged to have been committed while the person was driving or in actual physical control of a vehicle upon the ways of this state open to the public while under the influence of alcohol, drugs, or a combination of alcohol and drugs. The trier of fact may infer from the refusal that the person was

under the influence. The inference is rebuttable.

(3) The provisions of this part do not limit the introduction of any other competent evidence bearing on the question of whether the person was under the influence of alcohol, drugs, or a combination of alcohol and drugs."

Section 5. Section 61-8-1019, MCA, is amended to read:

"61-8-1019. Administration of tests. (1) Only a licensed physician, registered nurse, or other qualified person acting under the supervision and direction of a physician or registered nurse may, at the request of a peace officer, withdraw blood for the purpose of determining any measured amount or detected presence of alcohol, drugs, or any combination of alcohol and drugs in the person. This limitation does not apply to the sampling of breath or oral fluid.

(2) In addition to any test administered at the direction of a peace officer, a person may request that an independent blood sample be drawn by a physician or registered nurse for the purpose of determining any measured amount or detected presence of alcohol, drugs, or any combination of alcohol and drugs in the person. The peace officer may not unreasonably impede the person's right to obtain an independent blood test. The peace officer may but has no duty to transport the person to a medical facility or otherwise assist the person in obtaining the test. The cost of an independent blood test is the sole responsibility of the person requesting the test. The failure or inability to obtain an independent test by a person does not preclude the admissibility in evidence of any test given at the direction of a peace officer.

(3) Upon the request of the person tested, full information concerning any test given at the direction of the peace officer must be made available to the person or the person's attorney.

(4) A physician, registered nurse, or other qualified person acting under the supervision and direction of a physician or registered nurse does not incur any civil or criminal liability as a result of the proper administering of a blood test when requested in writing by a peace officer to administer a test.

(5) The department in cooperation with any appropriate agency shall adopt uniform rules for the giving of tests and may require certification of training to administer the tests as considered necessary.

(6) If a peace officer has probable cause to believe that a person has violated 61-8-1002, meets the definition of aggravated driving under the influence as defined in 61-8-1001, or has violated 61-8-805 and a

sample of blood, breath, oral fluid, urine, or other bodily substance is taken from that person for any reason, a portion of that sample sufficient for analysis must be provided to a peace officer if requested for law enforcement purposes and upon issuance of a subpoena as provided in 46-4-301."

Section 6. Section 61-8-1032, MCA, is amended to read:

"61-8-1032. Mandatory suspension of license following certain implied consent action. (1) The department shall suspend an individual's driver license if the department receives a report for an implied consent violation from law enforcement or another reporting jurisdiction that, pursuant to 61-8-1016, an individual has refused a test or tests of the person's blood, breath, oral fluid, urine, or other bodily substance for determining any measured amount or detected presence of alcohol or drugs in the person's body.

(2) (a) Except as permitted by law, a person whose license or privilege to drive a motor vehicle on the public highways has been suspended may not have the license or privilege renewed or restored until the revocation or suspension duration has been completed.

(b) The department shall apply the appropriate sanction to the driver based on the reported conviction and prior offenses.

(c) The driver shall pay all reinstatement and administrative fees owed to the department before a driver's license or privilege to drive is restored.

(d) The duration of the suspension commences from the date of violation.

(e) If a person refuses tests for the same incident, the department may not consider each a separate refusal for purposes of suspension.

(f) The department may not issue a probationary license during the suspension issued under this part.

(3) (a) A person who has an implied consent violation shall pay the department an administrative fee of \$300, which must be deposited in the state special revenue account established pursuant to subsection (3)(b).

(b) There is a blood-draw search warrant processing account in the state special revenue fund established pursuant to 17-2-102(1)(b). Money provided to the department of justice pursuant to this subsection (3) must be deposited in the account and may be used only for providing forensic analysis of a driver's blood or

breath to determine the presence of alcohol or drugs.

(4) (a) Upon receiving a report of an implied consent violation, the department shall:

(i) for a first violation, suspend the driver's license or driving privilege for 6 months with no provision for a restricted probationary license; or

(ii) for a second or subsequent violation within 5 years of a previous refusal, as determined from the records of the department, suspend the driver's license or driving privilege for 1 year with no provision for a restricted probationary license.

(b) If a person who refuses to submit to one or more tests under this section is the holder of a commercial driver's license, in addition to any action taken against the driver's noncommercial driving privileges, the department shall:

(i) upon a first refusal, suspend the person's commercial driver's license for 1 year; and

(ii) upon a second or subsequent refusal, suspend the person's commercial driver's license for life, subject to department rules adopted to implement federal rules allowing for license reinstatement, if the person is otherwise eligible, upon completion of a minimum suspension period of 10 years. If the person has a prior conviction of a major offense listed in 61-8-802(2) arising from a separate incident, the conviction has the same effect as a previous testing refusal.

(5) A nonresident driver's license seized under this section must be sent by the department to the licensing authority of the nonresident's home state with a report of the nonresident's refusal to submit to one or more tests.

(6) The department may recognize the seizure of a license of a tribal member by a peace officer acting under the authority of a tribal government or an order issued by a tribal court suspending, revoking, or reinstating a license or adjudicating a license seizure if the actions are conducted pursuant to tribal law or regulation requiring alcohol or drug testing of motor vehicle operators and the conduct giving rise to the actions occurred within the exterior boundaries of a federally recognized Indian reservation in this state. Action by the department under this subsection is not reviewable under 61-8-1017."

Section 7. Section 67-1-211, MCA, is amended to read:

"67-1-211. Alcohol concentration standards -- evidence admissible -- administration of tests.

(1) If a person acting or attempting to act as a crewmember of an aircraft has an alcohol concentration, as defined in 61-8-1001, of 0.04% by weight or more, it may be inferred that the person is under the influence of alcohol and is in violation of 67-1-204.

(2) Evidence of any measured amount or detected presence of alcohol in the person at the time of the act alleged under subsection (1) and any other competent evidence bearing on the question of whether the person was under the influence of alcohol, drugs, or a combination of the two at the time of the act alleged is admissible in any criminal action or proceeding arising out of acts alleged to have been committed in violation of 67-1-204.

(3) In any criminal action or proceeding arising out of acts alleged to have been committed in violation of 67-1-204, the court or jury may consider federal regulations governing aeronautics.

(4) A person who operates an aircraft over the lands and waters of this state is considered to have given consent to a test of the person's blood, breath, oral fluid, or urine for the purpose of determining any measured amount or detected presence of alcohol or drugs in the person's body if arrested by a peace officer for operating, attempting to operate, or being in actual physical control of an aircraft while under the influence of alcohol, drugs, or a combination of the two. The test must be administered at the direction of a peace officer who has reasonable grounds to believe the person was operating, attempting to operate, or in actual physical control of an aircraft while under the influence of alcohol, drugs, or a combination of the two. The arresting officer may designate which of the tests must be administered. A person who is unconscious or who is otherwise in a condition rendering the person incapable of refusal is considered not to have withdrawn the consent provided by this subsection.

(5) If a person charged with a violation of 67-1-204 refuses to submit to a test of the person's blood, breath, oral fluid, or urine for the purpose of determining any measured amount or detected presence of alcohol in the person's body, a test will not be given, but proof of refusal is admissible in any criminal action or proceeding arising out of acts alleged to have been committed in violation of 67-1-204.

(6) The provisions relating to administration of tests provided in 61-8-1019 and the definition of alcohol concentration provided in 61-8-1001 apply to any testing done to determine any measured amount or detected presence of alcohol in a person and the alcohol concentration of a person charged with violation of 67-1-204."

Section 8. Effective date. [This act] is effective on passage and approval.

- END -

I hereby certify that the within bill,
SB 13, originated in the Senate.

Secretary of the Senate

President of the Senate

Signed this _____ day
of _____, 2023.

Speaker of the House

Signed this _____ day
of _____, 2023.

SENATE BILL NO. 13

INTRODUCED BY K. REGIER

BY REQUEST OF THE LAW AND JUSTICE INTERIM COMMITTEE

AN ACT PROVIDING ADDITIONAL TYPES OF BODILY FLUIDS TO TEST FOR THE PRESENCE OF DRUGS IN DRIVING WHILE UNDER THE INFLUENCE CASES; AMENDING SECTIONS 23-2-535, 61-8-1010, 61-8-1016, 61-8-1018, 61-8-1019, 61-8-1032, AND 67-1-211, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.



AN ACT PROVIDING ADDITIONAL TYPES OF BODILY FLUIDS TO TEST FOR THE PRESENCE OF DRUGS IN DRIVING WHILE UNDER THE INFLUENCE CASES; AMENDING SECTIONS 23-2-535, 61-8-1010, 61-8-1016, 61-8-1018, 61-8-1019, 61-8-1032, AND 67-1-211, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 23-2-535, MCA, is amended to read:

"23-2-535. Alcohol concentration standards -- evidence admissible -- administration of tests.

(1) The inferences contained in 61-8-1002 apply to any criminal action or proceeding arising out of acts alleged to have been committed in violation of 23-2-523(2).

(2) Evidence of any measured amount or detected presence of alcohol or drugs in a person at the time of the act alleged, as shown by analysis of the person's blood, breath, oral fluid, or urine, and any other competent evidence bearing on the question of whether the person was under the influence of alcohol, drugs, or a combination of the two at the time of the act alleged is admissible in any criminal action or proceeding arising out of acts alleged to have been committed in violation of 23-2-523(2).

(3) If a person charged with violation of 23-2-523(2) refuses to submit to a test of the person's blood, breath, or urine for the purpose of determining any measured amount or detected presence of alcohol, none will be given, but proof of refusal is admissible in any criminal action or proceeding arising out of acts alleged to have been committed in violation of 23-2-523(2).

(4) The provisions relating to administration of tests provided in 61-8-1019 and the definition of alcohol concentration provided in 61-8-1001 apply to any testing done to a person charged with violation of 23-2-523(2).

(5) As used in 23-2-523(2), the term "under the influence" has the meaning provided in 61-8-

1001."

Section 2. Section 61-8-1010, MCA, is amended to read:

"61-8-1010. Driving under influence -- ignition interlock device -- 24/7 sobriety and drug monitoring program. (1) For a person convicted of a first offense of driving under the influence, including 61-8-1002, an offense that meets the definition of aggravated driving under the influence in 61-8-1001, or a similar offense under the laws of another state, in addition to the punishments listed in 61-8-1007, the court may, regardless of disposition and if a probationary license is recommended by the court, require the person to comply with the conditions listed in subsection (2)(a) or (2)(b).

(2) On a second or subsequent conviction for a violation of driving under the influence, including 61-8-1002, an offense that meets the definition of aggravated driving under the influence in 61-8-1001, or a similar offense under the laws of another state, or a second or subsequent conviction under 61-5-212 when the reason for the suspension or revocation was that the person was convicted of a violation of driving under the influence, including 61-8-1002, an offense that meets the definition of aggravated driving under the influence in 61-8-1001, or a similar offense under previous laws of this state or the laws of another state, or the suspension was under 61-8-1016 or a similar law of another state for refusal to take a test for alcohol or drugs requested by a peace officer who believed that the person might be driving under the influence, in addition to the punishments listed in 61-8-1002 and 61-8-1007, the court shall ~~require the person~~:

(a) require the person to participate in the 24/7 sobriety and drug monitoring program provided for in 44-4-1203 or require the person to participate in a court-approved alcohol or drug detection testing program and to pay the fees associated with the program;

(b) if recommending that a probationary license be issued to the person, restrict the person to driving only a motor vehicle equipped with a functioning ignition interlock device during the probationary period and require the person to pay the reasonable cost of leasing, installing, and maintaining the device; or

(c) order that each motor vehicle owned by the person at the time of the offense be seized and subjected to the forfeiture procedure provided under 61-8-1033. A vehicle used by a person as a common carrier in the transaction of business as a common carrier is not subject to forfeiture unless it appears that the owner or other person in charge of the vehicle consented to or was privy to the violation. A vehicle may not be

forfeited under this section for any act or omission established by the owner to have been committed or omitted by a person other than the owner while the vehicle was unlawfully in the possession of a person other than the owner in violation of the criminal laws of this state or the United States. Forfeiture of a vehicle encumbered by a security interest is subject to the secured person's interest if the person did not know and could not have reasonably known of the unlawful possession, use, or other act on which the forfeiture is sought.

(3) All court-approved alcohol or drug detection testing programs allowed under this section are required to use the state's data management system pursuant to 44-4-1203."

Section 3. Section 61-8-1016, MCA, is amended to read:

"61-8-1016. Implied consent -- blood or breath tests for alcohol, blood or oral fluid for drugs, or testing for both -- alcohol and drugs using recognized methods for each -- refusal to submit to test -- administrative license suspension. (1) (a) A person who operates or is in actual physical control of a vehicle or commercial motor vehicle upon the ways of this state open to the public is considered to have given consent to a test or tests of the person's blood or breath for the purpose of determining any measured amount or detected presence of alcohol or blood or oral fluid for the purpose of determining any measured amount or detected presence of drugs in the person's body.

(b) The tests in subsection (1)(a) include but are not limited to a preliminary alcohol screening test of the person's breath for the purpose of estimating the person's alcohol concentration.

(c) A preliminary alcohol screening test may not be conducted or requested under this section unless both the peace officer and the instrument used to conduct the test have been certified by the department pursuant to rules adopted under the authority of 61-8-1019(5).

(d) The person's obligation to submit to a test in subsection (1)(a) is not satisfied by the person submitting to a preliminary alcohol screening test pursuant to this section.

(2) (a) The test or tests must be administered at the direction of a peace officer when:

(i) the peace officer has particularized suspicion to believe that the person has been driving or has been in actual physical control of a vehicle upon ways of this state open to the public while under the influence of alcohol, drugs, or a combination of the two and the person has been detained for a violation of driving under the influence as provided in 61-8-1002 or an offense that meets the definition of aggravated driving under the

influence in 61-8-1001;

(ii) the person is under the age of 21 and the peace officer has particularized suspicion to believe that the person has been driving or in actual physical control of a vehicle in violation of 61-8-1002(1)(e); or

(iii) the peace officer has probable cause to believe that the person was driving or in actual physical control of a vehicle or commercial motor vehicle:

(A) in violation of driving under the influence, as provided in 61-8-1002, and the person has been placed under arrest;

(B) in violation of driving under the influence as provided in 61-8-1002, and the person has been involved in a motor vehicle crash or collision resulting in property damage;

(C) and the person has been involved in a motor vehicle accident or collision resulting in serious bodily injury, as defined in 45-2-101, or death; or

(D) in violation of driving under the influence as provided in 61-8-1002 and meets the definition of aggravated driving under the influence in 61-8-1001.

(b) A peace officer may designate which test or tests are administered.

(c) The peace officer shall inform the person of the right to refuse the test and that the refusal to submit to the test will result in the suspension for up to 1 year of that person's driver's license.

(d) A hearing as provided for in 61-8-1017 must be available. The issues in the hearing must be limited to determining whether a peace officer had a particularized suspicion that the person was in violation of 61-8-1002 or an offense meeting the definition of aggravated driving under the influence in 61-8-1001, and whether the person refused to submit to the test.

(e) If a person refuses a preliminary alcohol screening test and another test during the same incident, the department may not consider each a separate refusal for purposes of suspension of the person's driver's license.

(3) A person who is unconscious or who is otherwise in a condition rendering the person incapable of refusal is considered not to have withdrawn the consent requested in subsection (1).

(4) (a) If an arrested person refuses to submit to one or more tests requested and designated by the peace officer, the refused test or tests may not be given unless the person has refused to provide a breath, blood, urine, or other bodily substance in a prior investigation in this state or under a substantially similar statute

in another jurisdiction or the arrested person has a prior conviction or pending offense for a violation of 45-5-104, 45-5-106, 45-5-205, or driving under the influence, including 61-8-1002, an offense that meets the definition of aggravated driving under the influence in 61-8-1001, or a similar offense under previous laws of this state or a similar statute in another jurisdiction.

(b) ~~Upon~~On the person's refusal to provide the breath, blood, urine, oral fluid, or other bodily substance requested by the peace officer pursuant to subsection (1) and this subsection (4) may apply for a search warrant to be issued pursuant to 46-5-224 to collect a sample of the person's blood or oral fluid for testing.

(c) (i) ~~Upon~~On the person's refusal to provide a breath, blood, urine, oral fluid, or other bodily substance, the peace officer shall, on behalf of the department, immediately seize the person's driver's license. The peace officer shall immediately forward the license to the department, along with a report certified under penalty of law stating which of the conditions set forth in subsection (2)(a) provides the basis for the testing request and confirming that the person refused to submit to one or more tests requested and designated by the peace officer. Upon receipt of the report, the department shall suspend the license for the period provided in 61-8-1032.

(ii) Upon seizure of a driver's license, the peace officer shall issue, on behalf of the department, a temporary driving permit, which is effective 12 hours after issuance and is valid for 5 days following the date of issuance, and shall provide the driver with written notice of the license suspension and the right to a hearing as provided in 61-8-1017.

(iii) A nonresident driver's license seized under this section must be sent by the department to the licensing authority of the nonresident's home state with a report of the nonresident's refusal to submit to one or more tests.

(5) This section does not apply to tests, samples, and analyses of blood ~~or~~, breath, or urine used for purposes of medical treatment or care of an injured motorist, related to a lawful seizure for a suspected violation of an offense not in this part, or performed pursuant to a search warrant.

(6) This section does not prohibit the release of information obtained from tests, samples, and analyses of blood ~~or~~, breath, or urine for law enforcement purposes as provided in 46-4-301 and 61-8-1019(6)."

Section 4. Section 61-8-1018, MCA, is amended to read:

"61-8-1018. Evidence admissible -- conditions of admissibility. (1) Upon the trial of a criminal action or other proceeding arising out of acts alleged to have been committed by a person in violation of driving under the influence, including 61-8-1002, an offense that meets the definition of aggravated driving under the influence in 61-8-1001, a similar offense under previous laws of this state or the laws of another state, or 61-8-805:

(a) evidence of any measured amount or detected presence of alcohol, drugs, or a combination of alcohol and drugs in the person at the time of a test, as shown by an analysis of the person's blood ~~or~~, breath, or oral fluid is admissible. A positive test result does not, in itself, prove that the person was under the influence of a drug or drugs at the time the person was in control of a vehicle. A person may not be convicted of a violation of 61-8-1002(1)(a) based on the presence of a drug or drugs in the person unless some other competent evidence exists that tends to establish that the person was under the influence of a drug or drugs while driving or in actual physical control of a motor vehicle within this state.

(b) a report of the facts and results of one or more tests of a person's blood ~~or~~, breath, or oral fluid is admissible in evidence if:

(i) a breath test, oral fluid screening test, or preliminary alcohol screening test was performed by a person certified by the forensic sciences division of the department to administer the test; or

(ii) a blood sample was analyzed in a laboratory operated or certified by the department or in a laboratory exempt from certification under the rules of the department and the blood was withdrawn from the person by a person competent to do so under 61-8-1019(1); and

(c) a report of the facts and results of a physical, psychomotor, or physiological assessment of a person is admissible in evidence if it was made by a person trained by the department or by a person who has received training recognized by the department.

(2) If the person under arrest refused to submit to one or more tests under 61-8-1016, whether or not a sample was subsequently collected for any purpose, proof of refusal is admissible in any criminal action or proceeding arising out of acts alleged to have been committed while the person was driving or in actual physical control of a vehicle upon the ways of this state open to the public while under the influence of alcohol, drugs, or a combination of alcohol and drugs. The trier of fact may infer from the refusal that the person was

under the influence. The inference is rebuttable.

(3) The provisions of this part do not limit the introduction of any other competent evidence bearing on the question of whether the person was under the influence of alcohol, drugs, or a combination of alcohol and drugs."

Section 5. Section 61-8-1019, MCA, is amended to read:

"61-8-1019. Administration of tests. (1) Only a licensed physician, registered nurse, or other qualified person acting under the supervision and direction of a physician or registered nurse may, at the request of a peace officer, withdraw blood for the purpose of determining any measured amount or detected presence of alcohol, drugs, or any combination of alcohol and drugs in the person. This limitation does not apply to the sampling of breath or oral fluid.

(2) In addition to any test administered at the direction of a peace officer, a person may request that an independent blood sample be drawn by a physician or registered nurse for the purpose of determining any measured amount or detected presence of alcohol, drugs, or any combination of alcohol and drugs in the person. The peace officer may not unreasonably impede the person's right to obtain an independent blood test. The peace officer may but has no duty to transport the person to a medical facility or otherwise assist the person in obtaining the test. The cost of an independent blood test is the sole responsibility of the person requesting the test. The failure or inability to obtain an independent test by a person does not preclude the admissibility in evidence of any test given at the direction of a peace officer.

(3) Upon the request of the person tested, full information concerning any test given at the direction of the peace officer must be made available to the person or the person's attorney.

(4) A physician, registered nurse, or other qualified person acting under the supervision and direction of a physician or registered nurse does not incur any civil or criminal liability as a result of the proper administering of a blood test when requested in writing by a peace officer to administer a test.

(5) The department in cooperation with any appropriate agency shall adopt uniform rules for the giving of tests and may require certification of training to administer the tests as considered necessary.

(6) If a peace officer has probable cause to believe that a person has violated 61-8-1002, meets the definition of aggravated driving under the influence as defined in 61-8-1001, or has violated 61-8-805 and a

sample of blood, breath, oral fluid, urine, or other bodily substance is taken from that person for any reason, a portion of that sample sufficient for analysis must be provided to a peace officer if requested for law enforcement purposes and upon issuance of a subpoena as provided in 46-4-301."

Section 6. Section 61-8-1032, MCA, is amended to read:

"61-8-1032. Mandatory suspension of license following certain implied consent action. (1) The department shall suspend an individual's driver license if the department receives a report for an implied consent violation from law enforcement or another reporting jurisdiction that, pursuant to 61-8-1016, an individual has refused a test or tests of the person's blood, breath, oral fluid, urine, or other bodily substance for determining any measured amount or detected presence of alcohol or drugs in the person's body.

(2) (a) Except as permitted by law, a person whose license or privilege to drive a motor vehicle on the public highways has been suspended may not have the license or privilege renewed or restored until the revocation or suspension duration has been completed.

(b) The department shall apply the appropriate sanction to the driver based on the reported conviction and prior offenses.

(c) The driver shall pay all reinstatement and administrative fees owed to the department before a driver's license or privilege to drive is restored.

(d) The duration of the suspension commences from the date of violation.

(e) If a person refuses tests for the same incident, the department may not consider each a separate refusal for purposes of suspension.

(f) The department may not issue a probationary license during the suspension issued under this part.

(3) (a) A person who has an implied consent violation shall pay the department an administrative fee of \$300, which must be deposited in the state special revenue account established pursuant to subsection (3)(b).

(b) There is a blood-draw search warrant processing account in the state special revenue fund established pursuant to 17-2-102(1)(b). Money provided to the department of justice pursuant to this subsection (3) must be deposited in the account and may be used only for providing forensic analysis of a driver's blood or

breath to determine the presence of alcohol or drugs.

(4) (a) Upon receiving a report of an implied consent violation, the department shall:

(i) for a first violation, suspend the driver's license or driving privilege for 6 months with no provision for a restricted probationary license; or

(ii) for a second or subsequent violation within 5 years of a previous refusal, as determined from the records of the department, suspend the driver's license or driving privilege for 1 year with no provision for a restricted probationary license.

(b) If a person who refuses to submit to one or more tests under this section is the holder of a commercial driver's license, in addition to any action taken against the driver's noncommercial driving privileges, the department shall:

(i) upon a first refusal, suspend the person's commercial driver's license for 1 year; and

(ii) upon a second or subsequent refusal, suspend the person's commercial driver's license for life, subject to department rules adopted to implement federal rules allowing for license reinstatement, if the person is otherwise eligible, upon completion of a minimum suspension period of 10 years. If the person has a prior conviction of a major offense listed in 61-8-802(2) arising from a separate incident, the conviction has the same effect as a previous testing refusal.

(5) A nonresident driver's license seized under this section must be sent by the department to the licensing authority of the nonresident's home state with a report of the nonresident's refusal to submit to one or more tests.

(6) The department may recognize the seizure of a license of a tribal member by a peace officer acting under the authority of a tribal government or an order issued by a tribal court suspending, revoking, or reinstating a license or adjudicating a license seizure if the actions are conducted pursuant to tribal law or regulation requiring alcohol or drug testing of motor vehicle operators and the conduct giving rise to the actions occurred within the exterior boundaries of a federally recognized Indian reservation in this state. Action by the department under this subsection is not reviewable under 61-8-1017."

Section 7. Section 67-1-211, MCA, is amended to read:

"67-1-211. Alcohol concentration standards -- evidence admissible -- administration of tests.

(1) If a person acting or attempting to act as a crewmember of an aircraft has an alcohol concentration, as defined in 61-8-1001, of 0.04% by weight or more, it may be inferred that the person is under the influence of alcohol and is in violation of 67-1-204.

(2) Evidence of any measured amount or detected presence of alcohol in the person at the time of the act alleged under subsection (1) and any other competent evidence bearing on the question of whether the person was under the influence of alcohol, drugs, or a combination of the two at the time of the act alleged is admissible in any criminal action or proceeding arising out of acts alleged to have been committed in violation of 67-1-204.

(3) In any criminal action or proceeding arising out of acts alleged to have been committed in violation of 67-1-204, the court or jury may consider federal regulations governing aeronautics.

(4) A person who operates an aircraft over the lands and waters of this state is considered to have given consent to a test of the person's blood, breath, oral fluid, or urine for the purpose of determining any measured amount or detected presence of alcohol or drugs in the person's body if arrested by a peace officer for operating, attempting to operate, or being in actual physical control of an aircraft while under the influence of alcohol, drugs, or a combination of the two. The test must be administered at the direction of a peace officer who has reasonable grounds to believe the person was operating, attempting to operate, or in actual physical control of an aircraft while under the influence of alcohol, drugs, or a combination of the two. The arresting officer may designate which of the tests must be administered. A person who is unconscious or who is otherwise in a condition rendering the person incapable of refusal is considered not to have withdrawn the consent provided by this subsection.

(5) If a person charged with a violation of 67-1-204 refuses to submit to a test of the person's blood, breath, oral fluid, or urine for the purpose of determining any measured amount or detected presence of alcohol in the person's body, a test will not be given, but proof of refusal is admissible in any criminal action or proceeding arising out of acts alleged to have been committed in violation of 67-1-204.

(6) The provisions relating to administration of tests provided in 61-8-1019 and the definition of alcohol concentration provided in 61-8-1001 apply to any testing done to determine any measured amount or detected presence of alcohol in a person and the alcohol concentration of a person charged with violation of 67-1-204."

Section 8. Effective date. [This act] is effective on passage and approval.

- END -

I hereby certify that the within bill,
SB 13, originated in the Senate.

Secretary of the Senate

President of the Senate

Signed this _____ day
of _____, 2023.

Speaker of the House

Signed this _____ day
of _____, 2023.

SENATE BILL NO. 13

INTRODUCED BY K. REGIER

BY REQUEST OF THE LAW AND JUSTICE INTERIM COMMITTEE

AN ACT PROVIDING ADDITIONAL TYPES OF BODILY FLUIDS TO TEST FOR THE PRESENCE OF DRUGS IN DRIVING WHILE UNDER THE INFLUENCE CASES; AMENDING SECTIONS 23-2-535, 61-8-1010, 61-8-1016, 61-8-1018, 61-8-1019, 61-8-1032, AND 67-1-211, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.



GOVERNOR'S OFFICE OF
BUDGET AND PROGRAM PLANNING

Fiscal Note 2025 Biennium

Bill information:

SB0013 - Revise DUI laws related to admissible tests for presence of drugs (Regier, Keith)

Status: As Introduced

☐ Significant Local Gov Impact

☒ Needs to be included in HB 2

☐ Technical Concerns

☐ Included in the Executive Budget

☐ Significant Long-Term Impacts

☐ Dedicated Revenue Form Attached

FISCAL SUMMARY

	<u>FY 2024</u> <u>Difference</u>	<u>FY 2025</u> <u>Difference</u>	<u>FY 2026</u> <u>Difference</u>	<u>FY 2027</u> <u>Difference</u>
Expenditures:				
General Fund - OPD	\$10,000	\$10,000	\$0	\$0
State Special Revenue - MHP	\$36,000	\$36,000	\$36,540	\$37,088
Revenue:				
General Fund	\$0	\$0	\$0	\$0
State Special Revenue	\$0	\$0	\$0	\$0
Net Impact-General Fund Balance:	<u>(\$10,000)</u>	<u>(\$10,000)</u>	<u>\$0</u>	<u>\$0</u>

Description of fiscal impact: SB 13 allows for oral fluid to be used to test for the presence of drugs. The Montana Highway Patrol will incur increased costs for each test they administer. A new form of testing for establishing intoxication levels will need to be vetted by the courts for reliability and admissibility. The Office of Public Defender (OPD) may need to hire scientific experts to litigate the new oral fluid methodology.

FISCAL ANALYSIS

Assumptions:

Department of Justice – Montana Highway Patrol

1. The Montana Highway Patrol (MHP) currently makes approximately 30% of the DUI stops statewide.
2. Each oral fluid tester costs \$25.

Fiscal Note Request – As Introduced*(continued)*

3. MHP estimates 1,240 oral fluid tests would be used each year costing \$31,000. A 1.5% inflationary increase is assumed in FY 2026 and FY 2027.
4. MHP assumes \$5,000 in travel expenses would be incurred to provide training on oral fluid testers around the state.
5. MHP assumes that equipment will need to be updated periodically and that costs will increase with utilization.

Office of the Public Defender (OPD)

6. The OPD may incur costs associated with this bill for expert witnesses until this new process is vetted.
7. The estimated cost is assumed to be \$10,000 each year in the next biennium.

	<u>FY 2024</u> <u>Difference</u>	<u>FY 2025</u> <u>Difference</u>	<u>FY 2026</u> <u>Difference</u>	<u>FY 2027</u> <u>Difference</u>
<u>Fiscal Impact:</u>				
<u>Expenditures:</u>				
Operating Expenses - OPD	\$10,000	\$10,000	\$0	\$0
Operating Expenses - MHP	\$36,000	\$36,000	\$36,540	\$37,088
TOTAL Expenditures	\$46,000	\$46,000	\$36,540	\$37,088
<u>Funding of Expenditures:</u>				
General Fund (01)	\$10,000	\$10,000	\$0	\$0
State Special Revenue (02)	\$36,000	\$36,000	\$36,540	\$37,088
TOTAL Funding of Exp.	\$46,000	\$46,000	\$36,540	\$37,088
<u>Revenues:</u>				
General Fund (01)	\$0	\$0	\$0	\$0
State Special Revenue (02)	\$0	\$0	\$0	\$0
TOTAL Revenues	\$0	\$0	\$0	\$0
<u>Net Impact to Fund Balance (Revenue minus Funding of Expenditures):</u>				
General Fund (01)	(\$10,000)	(\$10,000)	\$0	\$0
State Special Revenue (02)	(\$36,000)	(\$36,000)	(\$36,540)	(\$37,088)

NO SPONSOR SIGNATURE*Sponsor's Initials*

1/2/23

Date*Budget Director's Initials*

12-29-22

Date

SENATE BILL NO. 13

INTRODUCED BY K. REGIER

BY REQUEST OF THE LAW AND JUSTICE INTERIM COMMITTEE

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING ADDITIONAL TYPES OF BODILY FLUIDS TO TEST FOR THE PRESENCE OF DRUGS IN DRIVING WHILE UNDER THE INFLUENCE CASES; AMENDING SECTIONS 23-2-535, 61-8-1010, 61-8-1016, 61-8-1018, 61-8-1019, 61-8-1032, AND 67-1-211, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 23-2-535, MCA, is amended to read:

"23-2-535. Alcohol concentration standards -- evidence admissible -- administration of tests.

(1) The inferences contained in 61-8-1002 apply to any criminal action or proceeding arising out of acts alleged to have been committed in violation of 23-2-523(2).

(2) Evidence of any measured amount or detected presence of alcohol or drugs in a person at the time of the act alleged, as shown by analysis of the person's blood, breath, oral fluid, or urine, and any other competent evidence bearing on the question of whether the person was under the influence of alcohol, drugs, or a combination of the two at the time of the act alleged is admissible in any criminal action or proceeding arising out of acts alleged to have been committed in violation of 23-2-523(2).

(3) If a person charged with violation of 23-2-523(2) refuses to submit to a test of the person's blood, breath, or urine for the purpose of determining any measured amount or detected presence of alcohol, none will be given, but proof of refusal is admissible in any criminal action or proceeding arising out of acts alleged to have been committed in violation of 23-2-523(2).

(4) The provisions relating to administration of tests provided in 61-8-1019 and the definition of alcohol concentration provided in 61-8-1001 apply to any testing done to a person charged with violation of 23-2-523(2).

(5) As used in 23-2-523(2), the term "under the influence" has the meaning provided in 61-8-

1 1001."

2

3 **Section 2.** Section 61-8-1010, MCA, is amended to read:

4 **"61-8-1010. Driving under influence -- ignition interlock device -- 24/7 sobriety and drug**

5 **monitoring program.** (1) For a person convicted of a first offense of driving under the influence, including 61-
6 8-1002, an offense that meets the definition of aggravated driving under the influence in 61-8-1001, or a similar
7 offense under the laws of another state, in addition to the punishments listed in 61-8-1007, the court may,
8 regardless of disposition and if a probationary license is recommended by the court, require the person to
9 comply with the conditions listed in subsection (2)(a) or (2)(b).

10 (2) On a second or subsequent conviction for a violation of driving under the influence, including
11 61-8-1002, an offense that meets the definition of aggravated driving under the influence in 61-8-1001, or a
12 similar offense under the laws of another state, or a second or subsequent conviction under 61-5-212 when the
13 reason for the suspension or revocation was that the person was convicted of a violation of driving under the
14 influence, including 61-8-1002, an offense that meets the definition of aggravated driving under the influence in
15 61-8-1001, or a similar offense under previous laws of this state or the laws of another state, or the suspension
16 was under 61-8-1016 or a similar law of another state for refusal to take a test for alcohol or drugs requested by
17 a peace officer who believed that the person might be driving under the influence, in addition to the
18 punishments listed in 61-8-1002 and 61-8-1007, the court shall ~~require the person:~~

19 (a) require the person to participate in the 24/7 sobriety and drug monitoring program provided for
20 in 44-4-1203 or require the person to participate in a court-approved alcohol or drug detection testing program
21 and to pay the fees associated with the program;

22 (b) if recommending that a probationary license be issued to the person, restrict the person to
23 driving only a motor vehicle equipped with a functioning ignition interlock device during the probationary period
24 and require the person to pay the reasonable cost of leasing, installing, and maintaining the device; or

25 (c) order that each motor vehicle owned by the person at the time of the offense be seized and
26 subjected to the forfeiture procedure provided under 61-8-1033. A vehicle used by a person as a common
27 carrier in the transaction of business as a common carrier is not subject to forfeiture unless it appears that the
28 owner or other person in charge of the vehicle consented to or was privy to the violation. A vehicle may not be

1 forfeited under this section for any act or omission established by the owner to have been committed or omitted
2 by a person other than the owner while the vehicle was unlawfully in the possession of a person other than the
3 owner in violation of the criminal laws of this state or the United States. Forfeiture of a vehicle encumbered by a
4 security interest is subject to the secured person's interest if the person did not know and could not have
5 reasonably known of the unlawful possession, use, or other act on which the forfeiture is sought.

6 (3) All court-approved alcohol or drug detection testing programs allowed under this section are
7 required to use the state's data management system pursuant to 44-4-1203."
8

9 **Section 3.** Section 61-8-1016, MCA, is amended to read:

10 **"61-8-1016. Implied consent -- blood or breath tests for alcohol, blood or oral fluid for drugs, or**
11 **testing for both -- alcohol and drugs using recognized methods for each -- refusal to submit to test --**
12 **administrative license suspension.** (1) (a) A person who operates or is in actual physical control of a vehicle
13 or commercial motor vehicle upon the ways of this state open to the public is considered to have given consent
14 to a test or tests of the person's blood or breath for the purpose of determining any measured amount or
15 detected presence of alcohol or blood or oral fluid for the purpose of determining any measured amount or
16 detected presence of drugs in the person's body.

17 (b) The tests in subsection (1)(a) include but are not limited to a preliminary alcohol screening test
18 of the person's breath for the purpose of estimating the person's alcohol concentration.

19 (c) A preliminary alcohol screening test may not be conducted or requested under this section
20 unless both the peace officer and the instrument used to conduct the test have been certified by the department
21 pursuant to rules adopted under the authority of 61-8-1019(5).

22 (d) The person's obligation to submit to a test in subsection (1)(a) is not satisfied by the person
23 submitting to a preliminary alcohol screening test pursuant to this section.

24 (2) (a) The test or tests must be administered at the direction of a peace officer when:

25 (i) the peace officer has particularized suspicion to believe that the person has been driving or has
26 been in actual physical control of a vehicle upon ways of this state open to the public while under the influence
27 of alcohol, drugs, or a combination of the two and the person has been detained for a violation of driving under
28 the influence as provided in 61-8-1002 or an offense that meets the definition of aggravated driving under the

1 influence in 61-8-1001;

2 (ii) the person is under the age of 21 and the peace officer has particularized suspicion to believe
3 that the person has been driving or in actual physical control of a vehicle in violation of 61-8-1002(1)(e); or

4 (iii) the peace officer has probable cause to believe that the person was driving or in actual
5 physical control of a vehicle or commercial motor vehicle:

6 (A) in violation of driving under the influence, as provided in 61-8-1002, and the person has been
7 placed under arrest;

8 (B) in violation of driving under the influence as provided in 61-8-1002, and the person has been
9 involved in a motor vehicle crash or collision resulting in property damage;

10 (C) and the person has been involved in a motor vehicle accident or collision resulting in serious
11 bodily injury, as defined in 45-2-101, or death; or

12 (D) in violation of driving under the influence as provided in 61-8-1002 and meets the definition of
13 aggravated driving under the influence in 61-8-1001.

14 (b) A peace officer may designate which test or tests are administered.

15 (c) The peace officer shall inform the person of the right to refuse the test and that the refusal to
16 submit to the test will result in the suspension for up to 1 year of that person's driver's license.

17 (d) A hearing as provided for in 61-8-1017 must be available. The issues in the hearing must be
18 limited to determining whether a peace officer had a particularized suspicion that the person was in violation of
19 61-8-1002 or an offense meeting the definition of aggravated driving under the influence in 61-8-1001, and
20 whether the person refused to submit to the test.

21 (e) If a person refuses a preliminary alcohol screening test and another test during the same
22 incident, the department may not consider each a separate refusal for purposes of suspension of the person's
23 driver's license.

24 (3) A person who is unconscious or who is otherwise in a condition rendering the person incapable
25 of refusal is considered not to have withdrawn the consent requested in subsection (1).

26 (4) (a) If an arrested person refuses to submit to one or more tests requested and designated by
27 the peace officer, the refused test or tests may not be given unless the person has refused to provide a breath,
28 blood, urine, or other bodily substance in a prior investigation in this state or under a substantially similar statute

1 in another jurisdiction or the arrested person has a prior conviction or pending offense for a violation of 45-5-
2 104, 45-5-106, 45-5-205, or driving under the influence, including 61-8-1002, an offense that meets the
3 definition of aggravated driving under the influence in 61-8-1001, or a similar offense under previous laws of
4 this state or a similar statute in another jurisdiction.

5 (b) ~~Upon~~On the person's refusal to provide the breath, blood, urine, oral fluid, or other bodily
6 substance requested by the peace officer pursuant to subsection (1) and this subsection (4) may apply for a
7 search warrant to be issued pursuant to 46-5-224 to collect a sample of the person's blood or oral fluid for
8 testing.

9 (c) (i) ~~Upon~~On the person's refusal to provide a breath, blood, urine, oral fluid, or other bodily
10 substance, the peace officer shall, on behalf of the department, immediately seize the person's driver's license.
11 The peace officer shall immediately forward the license to the department, along with a report certified under
12 penalty of law stating which of the conditions set forth in subsection (2)(a) provides the basis for the testing
13 request and confirming that the person refused to submit to one or more tests requested and designated by the
14 peace officer. Upon receipt of the report, the department shall suspend the license for the period provided in
15 61-8-1032.

16 (ii) Upon seizure of a driver's license, the peace officer shall issue, on behalf of the department, a
17 temporary driving permit, which is effective 12 hours after issuance and is valid for 5 days following the date of
18 issuance, and shall provide the driver with written notice of the license suspension and the right to a hearing as
19 provided in 61-8-1017.

20 (iii) A nonresident driver's license seized under this section must be sent by the department to the
21 licensing authority of the nonresident's home state with a report of the nonresident's refusal to submit to one or
22 more tests.

23 (5) This section does not apply to tests, samples, and analyses of blood ~~or~~, breath, or urine used
24 for purposes of medical treatment or care of an injured motorist, related to a lawful seizure for a suspected
25 violation of an offense not in this part, or performed pursuant to a search warrant.

26 (6) This section does not prohibit the release of information obtained from tests, samples, and
27 analyses of blood ~~or~~, breath, or urine for law enforcement purposes as provided in 46-4-301 and 61-8-1019(6)."

28

1 **Section 4.** Section 61-8-1018, MCA, is amended to read:

2 **"61-8-1018. Evidence admissible -- conditions of admissibility.** (1) Upon the trial of a criminal
3 action or other proceeding arising out of acts alleged to have been committed by a person in violation of driving
4 under the influence, including 61-8-1002, an offense that meets the definition of aggravated driving under the
5 influence in 61-8-1001, a similar offense under previous laws of this state or the laws of another state, or 61-8-
6 805:

7 (a) evidence of any measured amount or detected presence of alcohol, drugs, or a combination of
8 alcohol and drugs in the person at the time of a test, as shown by an analysis of the person's blood ~~or~~, breath,
9 or oral fluid is admissible. A positive test result does not, in itself, prove that the person was under the influence
10 of a drug or drugs at the time the person was in control of a vehicle. A person may not be convicted of a
11 violation of 61-8-1002(1)(a) based on the presence of a drug or drugs in the person unless some other
12 competent evidence exists that tends to establish that the person was under the influence of a drug or drugs
13 while driving or in actual physical control of a motor vehicle within this state.

14 (b) a report of the facts and results of one or more tests of a person's blood ~~or~~, breath, or oral fluid
15 is admissible in evidence if:

16 (i) a breath test, oral fluid screening test, or preliminary alcohol screening test was performed by a
17 person certified by the forensic sciences division of the department to administer the test; or

18 (ii) a blood sample was analyzed in a laboratory operated or certified by the department or in a
19 laboratory exempt from certification under the rules of the department and the blood was withdrawn from the
20 person by a person competent to do so under 61-8-1019(1); and

21 (c) a report of the facts and results of a physical, psychomotor, or physiological assessment of a
22 person is admissible in evidence if it was made by a person trained by the department or by a person who has
23 received training recognized by the department.

24 (2) If the person under arrest refused to submit to one or more tests under 61-8-1016, whether or
25 not a sample was subsequently collected for any purpose, proof of refusal is admissible in any criminal action
26 or proceeding arising out of acts alleged to have been committed while the person was driving or in actual
27 physical control of a vehicle upon the ways of this state open to the public while under the influence of alcohol,
28 drugs, or a combination of alcohol and drugs. The trier of fact may infer from the refusal that the person was

1 under the influence. The inference is rebuttable.

2 (3) The provisions of this part do not limit the introduction of any other competent evidence bearing
3 on the question of whether the person was under the influence of alcohol, drugs, or a combination of alcohol
4 and drugs."
5

6 **Section 5.** Section 61-8-1019, MCA, is amended to read:

7 **"61-8-1019. Administration of tests.** (1) Only a licensed physician, registered nurse, or other
8 qualified person acting under the supervision and direction of a physician or registered nurse may, at the
9 request of a peace officer, withdraw blood for the purpose of determining any measured amount or detected
10 presence of alcohol, drugs, or any combination of alcohol and drugs in the person. This limitation does not
11 apply to the sampling of breath or oral fluid.

12 (2) In addition to any test administered at the direction of a peace officer, a person may request
13 that an independent blood sample be drawn by a physician or registered nurse for the purpose of determining
14 any measured amount or detected presence of alcohol, drugs, or any combination of alcohol and drugs in the
15 person. The peace officer may not unreasonably impede the person's right to obtain an independent blood test.
16 The peace officer may but has no duty to transport the person to a medical facility or otherwise assist the
17 person in obtaining the test. The cost of an independent blood test is the sole responsibility of the person
18 requesting the test. The failure or inability to obtain an independent test by a person does not preclude the
19 admissibility in evidence of any test given at the direction of a peace officer.

20 (3) Upon the request of the person tested, full information concerning any test given at the
21 direction of the peace officer must be made available to the person or the person's attorney.

22 (4) A physician, registered nurse, or other qualified person acting under the supervision and
23 direction of a physician or registered nurse does not incur any civil or criminal liability as a result of the proper
24 administering of a blood test when requested in writing by a peace officer to administer a test.

25 (5) The department in cooperation with any appropriate agency shall adopt uniform rules for the
26 giving of tests and may require certification of training to administer the tests as considered necessary.

27 (6) If a peace officer has probable cause to believe that a person has violated 61-8-1002, meets
28 the definition of aggravated driving under the influence as defined in 61-8-1001, or has violated 61-8-805 and a

1 sample of blood, breath, oral fluid, urine, or other bodily substance is taken from that person for any reason, a
2 portion of that sample sufficient for analysis must be provided to a peace officer if requested for law
3 enforcement purposes and upon issuance of a subpoena as provided in 46-4-301."

4
5 **Section 6.** Section 61-8-1032, MCA, is amended to read:

6 **"61-8-1032. Mandatory suspension of license following certain implied consent action.** (1) The
7 department shall suspend an individual's driver license if the department receives a report for an implied
8 consent violation from law enforcement or another reporting jurisdiction that, pursuant to 61-8-1016, an
9 individual has refused a test or tests of the person's blood, breath, oral fluid, urine, or other bodily substance for
10 determining any measured amount or detected presence of alcohol or drugs in the person's body.

11 (2) (a) Except as permitted by law, a person whose license or privilege to drive a motor vehicle on
12 the public highways has been suspended may not have the license or privilege renewed or restored until the
13 revocation or suspension duration has been completed.

14 (b) The department shall apply the appropriate sanction to the driver based on the reported
15 conviction and prior offenses.

16 (c) The driver shall pay all reinstatement and administrative fees owed to the department before a
17 driver's license or privilege to drive is restored.

18 (d) The duration of the suspension commences from the date of violation.

19 (e) If a person refuses tests for the same incident, the department may not consider each a
20 separate refusal for purposes of suspension.

21 (f) The department may not issue a probationary license during the suspension issued under this
22 part.

23 (3) (a) A person who has an implied consent violation shall pay the department an administrative
24 fee of \$300, which must be deposited in the state special revenue account established pursuant to subsection
25 (3)(b).

26 (b) There is a blood-draw search warrant processing account in the state special revenue fund
27 established pursuant to 17-2-102(1)(b). Money provided to the department of justice pursuant to this subsection

28 (3) must be deposited in the account and may be used only for providing forensic analysis of a driver's blood or

breath to determine the presence of alcohol or drugs.

(4) (a) Upon receiving a report of an implied consent violation, the department shall:

(i) for a first violation, suspend the driver's license or driving privilege for 6 months with no provision for a restricted probationary license; or

(ii) for a second or subsequent violation within 5 years of a previous refusal, as determined from the records of the department, suspend the driver's license or driving privilege for 1 year with no provision for a restricted probationary license.

(b) If a person who refuses to submit to one or more tests under this section is the holder of a commercial driver's license, in addition to any action taken against the driver's noncommercial driving privileges, the department shall:

(i) upon a first refusal, suspend the person's commercial driver's license for 1 year; and

(ii) upon a second or subsequent refusal, suspend the person's commercial driver's license for life, subject to department rules adopted to implement federal rules allowing for license reinstatement, if the person is otherwise eligible, upon completion of a minimum suspension period of 10 years. If the person has a prior conviction of a major offense listed in 61-8-802(2) arising from a separate incident, the conviction has the same effect as a previous testing refusal.

(5) A nonresident driver's license seized under this section must be sent by the department to the licensing authority of the nonresident's home state with a report of the nonresident's refusal to submit to one or more tests.

(6) The department may recognize the seizure of a license of a tribal member by a peace officer acting under the authority of a tribal government or an order issued by a tribal court suspending, revoking, or reinstating a license or adjudicating a license seizure if the actions are conducted pursuant to tribal law or regulation requiring alcohol or drug testing of motor vehicle operators and the conduct giving rise to the actions occurred within the exterior boundaries of a federally recognized Indian reservation in this state. Action by the department under this subsection is not reviewable under 61-8-1017."

Section 7. Section 67-1-211, MCA, is amended to read:

"67-1-211. Alcohol concentration standards -- evidence admissible -- administration of tests.

(1) If a person acting or attempting to act as a crewmember of an aircraft has an alcohol concentration, as defined in 61-8-1001, of 0.04% by weight or more, it may be inferred that the person is under the influence of alcohol and is in violation of 67-1-204.

(2) Evidence of any measured amount or detected presence of alcohol in the person at the time of the act alleged under subsection (1) and any other competent evidence bearing on the question of whether the person was under the influence of alcohol, drugs, or a combination of the two at the time of the act alleged is admissible in any criminal action or proceeding arising out of acts alleged to have been committed in violation of 67-1-204.

(3) In any criminal action or proceeding arising out of acts alleged to have been committed in violation of 67-1-204, the court or jury may consider federal regulations governing aeronautics.

(4) A person who operates an aircraft over the lands and waters of this state is considered to have given consent to a test of the person's blood, breath, oral fluid, or urine for the purpose of determining any measured amount or detected presence of alcohol or drugs in the person's body if arrested by a peace officer for operating, attempting to operate, or being in actual physical control of an aircraft while under the influence of alcohol, drugs, or a combination of the two. The test must be administered at the direction of a peace officer who has reasonable grounds to believe the person was operating, attempting to operate, or in actual physical control of an aircraft while under the influence of alcohol, drugs, or a combination of the two. The arresting officer may designate which of the tests must be administered. A person who is unconscious or who is otherwise in a condition rendering the person incapable of refusal is considered not to have withdrawn the consent provided by this subsection.

(5) If a person charged with a violation of 67-1-204 refuses to submit to a test of the person's blood, breath, oral fluid, or urine for the purpose of determining any measured amount or detected presence of alcohol in the person's body, a test will not be given, but proof of refusal is admissible in any criminal action or proceeding arising out of acts alleged to have been committed in violation of 67-1-204.

(6) The provisions relating to administration of tests provided in 61-8-1019 and the definition of alcohol concentration provided in 61-8-1001 apply to any testing done to determine any measured amount or detected presence of alcohol in a person and the alcohol concentration of a person charged with violation of 67-1-204."

Amendment - 1st Reading-white - (S) - Judiciary

68th Legislature

Drafter: Julianne Burkhardt, 406-444-4025

SB0013.001.003

1

2 NEW SECTION. **Section 8.** **Effective date.** [This act] is effective on passage and approval.

3

- END -

AMENDED

SENATE BILL NO. 13

INTRODUCED BY K. REGIER

BY REQUEST OF THE LAW AND JUSTICE INTERIM COMMITTEE

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING ADDITIONAL TYPES OF BODILY FLUIDS TO TEST FOR THE PRESENCE OF DRUGS IN DRIVING WHILE UNDER THE INFLUENCE CASES; AMENDING SECTIONS 23-2-535, 61-8-1010, 61-8-1016, 61-8-1018, 61-8-1019, 61-8-1032, AND 67-1-211, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 23-2-535, MCA, is amended to read:

"23-2-535. Alcohol concentration standards -- evidence admissible -- administration of tests.

(1) The inferences contained in 61-8-1002 apply to any criminal action or proceeding arising out of acts alleged to have been committed in violation of 23-2-523(2).

(2) Evidence of any measured amount or detected presence of alcohol or drugs in a person at the time of the act alleged, as shown by analysis of the person's blood, breath, oral fluid, or urine, and any other competent evidence bearing on the question of whether the person was under the influence of alcohol, drugs, or a combination of the two at the time of the act alleged is admissible in any criminal action or proceeding arising out of acts alleged to have been committed in violation of 23-2-523(2).

(3) If a person charged with violation of 23-2-523(2) refuses to submit to a test of the person's blood, breath, or urine for the purpose of determining any measured amount or detected presence of alcohol, none will be given, but proof of refusal is admissible in any criminal action or proceeding arising out of acts alleged to have been committed in violation of 23-2-523(2).

(4) The provisions relating to administration of tests provided in 61-8-1019 and the definition of alcohol concentration provided in 61-8-1001 apply to any testing done to a person charged with violation of 23-2-523(2).

(5) As used in 23-2-523(2), the term "under the influence" has the meaning provided in 61-8-

1 1001."

2

3 **Section 2.** Section 61-8-1010, MCA, is amended to read:

4 **"61-8-1010. Driving under influence -- ignition interlock device -- 24/7 sobriety and drug**

5 **monitoring program.** (1) For a person convicted of a first offense of driving under the influence, including 61-
6 8-1002, an offense that meets the definition of aggravated driving under the influence in 61-8-1001, or a similar
7 offense under the laws of another state, in addition to the punishments listed in 61-8-1007, the court may,
8 regardless of disposition and if a probationary license is recommended by the court, require the person to
9 comply with the conditions listed in subsection (2)(a) or (2)(b).

10 (2) On a second or subsequent conviction for a violation of driving under the influence, including
11 61-8-1002, an offense that meets the definition of aggravated driving under the influence in 61-8-1001, or a
12 similar offense under the laws of another state, or a second or subsequent conviction under 61-5-212 when the
13 reason for the suspension or revocation was that the person was convicted of a violation of driving under the
14 influence, including 61-8-1002, an offense that meets the definition of aggravated driving under the influence in
15 61-8-1001, or a similar offense under previous laws of this state or the laws of another state, or the suspension
16 was under 61-8-1016 or a similar law of another state for refusal to take a test for alcohol or drugs requested by
17 a peace officer who believed that the person might be driving under the influence, in addition to the
18 punishments listed in 61-8-1002 and 61-8-1007, the court shall ~~require the person:~~

19 (a) require the person to participate in the 24/7 sobriety and drug monitoring program provided for
20 in 44-4-1203 or require the person to participate in a court-approved alcohol or drug detection testing program
21 and to pay the fees associated with the program;

22 (b) if recommending that a probationary license be issued to the person, restrict the person to
23 driving only a motor vehicle equipped with a functioning ignition interlock device during the probationary period
24 and require the person to pay the reasonable cost of leasing, installing, and maintaining the device; or

25 (c) order that each motor vehicle owned by the person at the time of the offense be seized and
26 subjected to the forfeiture procedure provided under 61-8-1033. A vehicle used by a person as a common
27 carrier in the transaction of business as a common carrier is not subject to forfeiture unless it appears that the
28 owner or other person in charge of the vehicle consented to or was privy to the violation. A vehicle may not be

1 forfeited under this section for any act or omission established by the owner to have been committed or omitted
2 by a person other than the owner while the vehicle was unlawfully in the possession of a person other than the
3 owner in violation of the criminal laws of this state or the United States. Forfeiture of a vehicle encumbered by a
4 security interest is subject to the secured person's interest if the person did not know and could not have
5 reasonably known of the unlawful possession, use, or other act on which the forfeiture is sought.

6 (3) All court-approved alcohol or drug detection testing programs allowed under this section are
7 required to use the state's data management system pursuant to 44-4-1203."
8

9 **Section 3.** Section 61-8-1016, MCA, is amended to read:

10 **"61-8-1016. Implied consent -- blood or breath tests for alcohol, blood or oral fluid for drugs, or**
11 **testing for both -- alcohol and drugs using recognized methods for each -- refusal to submit to test --**
12 **administrative license suspension.** (1) (a) A person who operates or is in actual physical control of a vehicle
13 or commercial motor vehicle upon the ways of this state open to the public is considered to have given consent
14 to a test or tests of the person's blood or breath for the purpose of determining any measured amount or
15 detected presence of alcohol or blood or oral fluid for the purpose of determining any measured amount or
16 detected presence of drugs in the person's body.

17 (b) The tests in subsection (1)(a) include but are not limited to a preliminary alcohol screening test
18 of the person's breath for the purpose of estimating the person's alcohol concentration.

19 (c) A preliminary alcohol screening test may not be conducted or requested under this section
20 unless both the peace officer and the instrument used to conduct the test have been certified by the department
21 pursuant to rules adopted under the authority of 61-8-1019(5).

22 (d) The person's obligation to submit to a test in subsection (1)(a) is not satisfied by the person
23 submitting to a preliminary alcohol screening test pursuant to this section.

24 (2) (a) The test or tests must be administered at the direction of a peace officer when:

25 (i) the peace officer has particularized suspicion to believe that the person has been driving or has
26 been in actual physical control of a vehicle upon ways of this state open to the public while under the influence
27 of alcohol, drugs, or a combination of the two and the person has been detained for a violation of driving under
28 the influence as provided in 61-8-1002 or an offense that meets the definition of aggravated driving under the

1 under the influence. The inference is rebuttable.

2 (3) The provisions of this part do not limit the introduction of any other competent evidence bearing
3 on the question of whether the person was under the influence of alcohol, drugs, or a combination of alcohol
4 and drugs."

5
6 **Section 5.** Section 61-8-1019, MCA, is amended to read:

7 **"61-8-1019. Administration of tests.** (1) Only a licensed physician, registered nurse, or other
8 qualified person acting under the supervision and direction of a physician or registered nurse may, at the
9 request of a peace officer, withdraw blood for the purpose of determining any measured amount or detected
10 presence of alcohol, drugs, or any combination of alcohol and drugs in the person. This limitation does not
11 apply to the sampling of breath or oral fluid.

12 (2) In addition to any test administered at the direction of a peace officer, a person may request
13 that an independent blood sample be drawn by a physician or registered nurse for the purpose of determining
14 any measured amount or detected presence of alcohol, drugs, or any combination of alcohol and drugs in the
15 person. The peace officer may not unreasonably impede the person's right to obtain an independent blood test.
16 The peace officer may but has no duty to transport the person to a medical facility or otherwise assist the
17 person in obtaining the test. The cost of an independent blood test is the sole responsibility of the person
18 requesting the test. The failure or inability to obtain an independent test by a person does not preclude the
19 admissibility in evidence of any test given at the direction of a peace officer.

20 (3) Upon the request of the person tested, full information concerning any test given at the
21 direction of the peace officer must be made available to the person or the person's attorney.

22 (4) A physician, registered nurse, or other qualified person acting under the supervision and
23 direction of a physician or registered nurse does not incur any civil or criminal liability as a result of the proper
24 administering of a blood test when requested in writing by a peace officer to administer a test.

25 (5) The department in cooperation with any appropriate agency shall adopt uniform rules for the
26 giving of tests and may require certification of training to administer the tests as considered necessary.

27 (6) If a peace officer has probable cause to believe that a person has violated 61-8-1002, meets
28 the definition of aggravated driving under the influence as defined in 61-8-1001, or has violated 61-8-805 and a

1 sample of blood, breath, oral fluid, urine, or other bodily substance is taken from that person for any reason, a
2 portion of that sample sufficient for analysis must be provided to a peace officer if requested for law
3 enforcement purposes and upon issuance of a subpoena as provided in 46-4-301."

4
5 **Section 6.** Section 61-8-1032, MCA, is amended to read:

6 **"61-8-1032. Mandatory suspension of license following certain implied consent action.** (1) The
7 department shall suspend an individual's driver license if the department receives a report for an implied
8 consent violation from law enforcement or another reporting jurisdiction that, pursuant to 61-8-1016, an
9 individual has refused a test or tests of the person's blood, breath, oral fluid, urine, or other bodily substance for
10 determining any measured amount or detected presence of alcohol or drugs in the person's body.

11 (2) (a) Except as permitted by law, a person whose license or privilege to drive a motor vehicle on
12 the public highways has been suspended may not have the license or privilege renewed or restored until the
13 revocation or suspension duration has been completed.

14 (b) The department shall apply the appropriate sanction to the driver based on the reported
15 conviction and prior offenses.

16 (c) The driver shall pay all reinstatement and administrative fees owed to the department before a
17 driver's license or privilege to drive is restored.

18 (d) The duration of the suspension commences from the date of violation.

19 (e) If a person refuses tests for the same incident, the department may not consider each a
20 separate refusal for purposes of suspension.

21 (f) The department may not issue a probationary license during the suspension issued under this
22 part.

23 (3) (a) A person who has an implied consent violation shall pay the department an administrative
24 fee of \$300, which must be deposited in the state special revenue account established pursuant to subsection
25 (3)(b).

26 (b) There is a blood-draw search warrant processing account in the state special revenue fund
27 established pursuant to 17-2-102(1)(b). Money provided to the department of justice pursuant to this subsection

28 (3) must be deposited in the account and may be used only for providing forensic analysis of a driver's blood or

SENATE BILL NO. 13

INTRODUCED BY K. REGIER

BY REQUEST OF THE LAW AND JUSTICE INTERIM COMMITTEE

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING ADDITIONAL TYPES OF BODILY FLUIDS TO TEST FOR THE PRESENCE OF DRUGS IN DRIVING WHILE UNDER THE INFLUENCE CASES; AMENDING SECTIONS 23-2-535, 61-8-1010, 61-8-1016, 61-8-1018, 61-8-1019, 61-8-1032, AND 67-1-211, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 23-2-535, MCA, is amended to read:

"23-2-535. Alcohol concentration standards -- evidence admissible -- administration of tests.

(1) The inferences contained in 61-8-1002 apply to any criminal action or proceeding arising out of acts alleged to have been committed in violation of 23-2-523(2).

(2) Evidence of any measured amount or detected presence of alcohol or drugs in a person at the time of the act alleged, as shown by analysis of the person's blood, breath, oral fluid, or urine, and any other competent evidence bearing on the question of whether the person was under the influence of alcohol, drugs, or a combination of the two at the time of the act alleged is admissible in any criminal action or proceeding arising out of acts alleged to have been committed in violation of 23-2-523(2).

(3) If a person charged with violation of 23-2-523(2) refuses to submit to a test of the person's blood, breath, or urine for the purpose of determining any measured amount or detected presence of alcohol, none will be given, but proof of refusal is admissible in any criminal action or proceeding arising out of acts alleged to have been committed in violation of 23-2-523(2).

(4) The provisions relating to administration of tests provided in 61-8-1019 and the definition of alcohol concentration provided in 61-8-1001 apply to any testing done to a person charged with violation of 23-2-523(2).

(5) As used in 23-2-523(2), the term "under the influence" has the meaning provided in 61-8-

1 1001."

2

3 **Section 2.** Section 61-8-1010, MCA, is amended to read:

4 **"61-8-1010. Driving under influence -- ignition interlock device -- 24/7 sobriety and drug**

5 **monitoring program.** (1) For a person convicted of a first offense of driving under the influence, including 61-
6 8-1002, an offense that meets the definition of aggravated driving under the influence in 61-8-1001, or a similar
7 offense under the laws of another state, in addition to the punishments listed in 61-8-1007, the court may,
8 regardless of disposition and if a probationary license is recommended by the court, require the person to
9 comply with the conditions listed in subsection (2)(a) or (2)(b).

10 (2) On a second or subsequent conviction for a violation of driving under the influence, including
11 61-8-1002, an offense that meets the definition of aggravated driving under the influence in 61-8-1001, or a
12 similar offense under the laws of another state, or a second or subsequent conviction under 61-5-212 when the
13 reason for the suspension or revocation was that the person was convicted of a violation of driving under the
14 influence, including 61-8-1002, an offense that meets the definition of aggravated driving under the influence in
15 61-8-1001, or a similar offense under previous laws of this state or the laws of another state, or the suspension
16 was under 61-8-1016 or a similar law of another state for refusal to take a test for alcohol or drugs requested by
17 a peace officer who believed that the person might be driving under the influence, in addition to the
18 punishments listed in 61-8-1002 and 61-8-1007, the court shall ~~require the person:~~

19 (a) require the person to participate in the 24/7 sobriety and drug monitoring program provided for
20 in 44-4-1203 or require the person to participate in a court-approved alcohol or drug detection testing program
21 and to pay the fees associated with the program;

22 (b) if recommending that a probationary license be issued to the person, restrict the person to
23 driving only a motor vehicle equipped with a functioning ignition interlock device during the probationary period
24 and require the person to pay the reasonable cost of leasing, installing, and maintaining the device; or

25 (c) order that each motor vehicle owned by the person at the time of the offense be seized and
26 subjected to the forfeiture procedure provided under 61-8-1033. A vehicle used by a person as a common
27 carrier in the transaction of business as a common carrier is not subject to forfeiture unless it appears that the
28 owner or other person in charge of the vehicle consented to or was privy to the violation. A vehicle may not be

1 forfeited under this section for any act or omission established by the owner to have been committed or omitted
2 by a person other than the owner while the vehicle was unlawfully in the possession of a person other than the
3 owner in violation of the criminal laws of this state or the United States. Forfeiture of a vehicle encumbered by a
4 security interest is subject to the secured person's interest if the person did not know and could not have
5 reasonably known of the unlawful possession, use, or other act on which the forfeiture is sought.

6 (3) All court-approved alcohol or drug detection testing programs allowed under this section are
7 required to use the state's data management system pursuant to 44-4-1203."
8

9 **Section 3.** Section 61-8-1016, MCA, is amended to read:

10 **"61-8-1016. Implied consent -- blood or breath tests for alcohol, blood or oral fluid for drugs, or**
11 **testing for both -- alcohol and drugs using recognized methods for each -- refusal to submit to test --**
12 **administrative license suspension.** (1) (a) A person who operates or is in actual physical control of a vehicle
13 or commercial motor vehicle upon the ways of this state open to the public is considered to have given consent
14 to a test or tests of the person's blood or breath for the purpose of determining any measured amount or
15 detected presence of alcohol or blood or oral fluid for the purpose of determining any measured amount or
16 detected presence of drugs in the person's body.

17 (b) The tests in subsection (1)(a) include but are not limited to a preliminary alcohol screening test
18 of the person's breath for the purpose of estimating the person's alcohol concentration.

19 (c) A preliminary alcohol screening test may not be conducted or requested under this section
20 unless both the peace officer and the instrument used to conduct the test have been certified by the department
21 pursuant to rules adopted under the authority of 61-8-1019(5).

22 (d) The person's obligation to submit to a test in subsection (1)(a) is not satisfied by the person
23 submitting to a preliminary alcohol screening test pursuant to this section.

24 (2) (a) The test or tests must be administered at the direction of a peace officer when:

25 (i) the peace officer has particularized suspicion to believe that the person has been driving or has
26 been in actual physical control of a vehicle upon ways of this state open to the public while under the influence
27 of alcohol, drugs, or a combination of the two and the person has been detained for a violation of driving under
28 the influence as provided in 61-8-1002 or an offense that meets the definition of aggravated driving under the

influence in 61-8-1001;

(ii) the person is under the age of 21 and the peace officer has particularized suspicion to believe that the person has been driving or in actual physical control of a vehicle in violation of 61-8-1002(1)(e); or

(iii) the peace officer has probable cause to believe that the person was driving or in actual physical control of a vehicle or commercial motor vehicle:

(A) in violation of driving under the influence, as provided in 61-8-1002, and the person has been placed under arrest;

(B) in violation of driving under the influence as provided in 61-8-1002, and the person has been involved in a motor vehicle crash or collision resulting in property damage;

(C) and the person has been involved in a motor vehicle accident or collision resulting in serious bodily injury, as defined in 45-2-101, or death; or

(D) in violation of driving under the influence as provided in 61-8-1002 and meets the definition of aggravated driving under the influence in 61-8-1001.

(b) A peace officer may designate which test or tests are administered.

(c) The peace officer shall inform the person of the right to refuse the test and that the refusal to submit to the test will result in the suspension for up to 1 year of that person's driver's license.

(d) A hearing as provided for in 61-8-1017 must be available. The issues in the hearing must be limited to determining whether a peace officer had a particularized suspicion that the person was in violation of 61-8-1002 or an offense meeting the definition of aggravated driving under the influence in 61-8-1001, and whether the person refused to submit to the test.

(e) If a person refuses a preliminary alcohol screening test and another test during the same incident, the department may not consider each a separate refusal for purposes of suspension of the person's driver's license.

(3) A person who is unconscious or who is otherwise in a condition rendering the person incapable of refusal is considered not to have withdrawn the consent requested in subsection (1).

(4) (a) If an arrested person refuses to submit to one or more tests requested and designated by the peace officer, the refused test or tests may not be given unless the person has refused to provide a breath, blood, urine, or other bodily substance in a prior investigation in this state or under a substantially similar statute

1 in another jurisdiction or the arrested person has a prior conviction or pending offense for a violation of 45-5-
2 104, 45-5-106, 45-5-205, or driving under the influence, including 61-8-1002, an offense that meets the
3 definition of aggravated driving under the influence in 61-8-1001, or a similar offense under previous laws of
4 this state or a similar statute in another jurisdiction.

5 (b) ~~Upon~~On the person's refusal to provide the breath, blood, urine, oral fluid, or other bodily
6 substance requested by the peace officer pursuant to subsection (1) and this subsection (4) may apply for a
7 search warrant to be issued pursuant to 46-5-224 to collect a sample of the person's blood or oral fluid for
8 testing.

9 (c) (i) ~~Upon~~On the person's refusal to provide a breath, blood, urine, oral fluid, or other bodily
10 substance, the peace officer shall, on behalf of the department, immediately seize the person's driver's license.
11 The peace officer shall immediately forward the license to the department, along with a report certified under
12 penalty of law stating which of the conditions set forth in subsection (2)(a) provides the basis for the testing
13 request and confirming that the person refused to submit to one or more tests requested and designated by the
14 peace officer. Upon receipt of the report, the department shall suspend the license for the period provided in
15 61-8-1032.

16 (ii) Upon seizure of a driver's license, the peace officer shall issue, on behalf of the department, a
17 temporary driving permit, which is effective 12 hours after issuance and is valid for 5 days following the date of
18 issuance, and shall provide the driver with written notice of the license suspension and the right to a hearing as
19 provided in 61-8-1017.

20 (iii) A nonresident driver's license seized under this section must be sent by the department to the
21 licensing authority of the nonresident's home state with a report of the nonresident's refusal to submit to one or
22 more tests.

23 (5) This section does not apply to tests, samples, and analyses of blood ~~or~~, breath, or urine used
24 for purposes of medical treatment or care of an injured motorist, related to a lawful seizure for a suspected
25 violation of an offense not in this part, or performed pursuant to a search warrant.

26 (6) This section does not prohibit the release of information obtained from tests, samples, and
27 analyses of blood ~~or~~, breath, or urine for law enforcement purposes as provided in 46-4-301 and 61-8-1019(6)."

28

Section 4. Section 61-8-1018, MCA, is amended to read:

"61-8-1018. Evidence admissible -- conditions of admissibility. (1) Upon the trial of a criminal action or other proceeding arising out of acts alleged to have been committed by a person in violation of driving under the influence, including 61-8-1002, an offense that meets the definition of aggravated driving under the influence in 61-8-1001, a similar offense under previous laws of this state or the laws of another state, or 61-8-805:

(a) evidence of any measured amount or detected presence of alcohol, drugs, or a combination of alcohol and drugs in the person at the time of a test, as shown by an analysis of the person's blood ~~or~~, breath, or oral fluid is admissible. A positive test result does not, in itself, prove that the person was under the influence of a drug or drugs at the time the person was in control of a vehicle. A person may not be convicted of a violation of 61-8-1002(1)(a) based on the presence of a drug or drugs in the person unless some other competent evidence exists that tends to establish that the person was under the influence of a drug or drugs while driving or in actual physical control of a motor vehicle within this state.

(b) a report of the facts and results of one or more tests of a person's blood ~~or~~, breath, or oral fluid is admissible in evidence if:

(i) a breath test, oral fluid screening test, or preliminary alcohol screening test was performed by a person certified by the forensic sciences division of the department to administer the test; or

(ii) a blood sample was analyzed in a laboratory operated or certified by the department or in a laboratory exempt from certification under the rules of the department and the blood was withdrawn from the person by a person competent to do so under 61-8-1019(1); and

(c) a report of the facts and results of a physical, psychomotor, or physiological assessment of a person is admissible in evidence if it was made by a person trained by the department or by a person who has received training recognized by the department.

(2) If the person under arrest refused to submit to one or more tests under 61-8-1016, whether or not a sample was subsequently collected for any purpose, proof of refusal is admissible in any criminal action or proceeding arising out of acts alleged to have been committed while the person was driving or in actual physical control of a vehicle upon the ways of this state open to the public while under the influence of alcohol, drugs, or a combination of alcohol and drugs. The trier of fact may infer from the refusal that the person was

1 under the influence. The inference is rebuttable.

2 (3) The provisions of this part do not limit the introduction of any other competent evidence bearing
3 on the question of whether the person was under the influence of alcohol, drugs, or a combination of alcohol
4 and drugs."

5

6 **Section 5.** Section 61-8-1019, MCA, is amended to read:

7 **"61-8-1019. Administration of tests.** (1) Only a licensed physician, registered nurse, or other
8 qualified person acting under the supervision and direction of a physician or registered nurse may, at the
9 request of a peace officer, withdraw blood for the purpose of determining any measured amount or detected
10 presence of alcohol, drugs, or any combination of alcohol and drugs in the person. This limitation does not
11 apply to the sampling of breath.

12 (2) In addition to any test administered at the direction of a peace officer, a person may request
13 that an independent blood sample be drawn by a physician or registered nurse for the purpose of determining
14 any measured amount or detected presence of alcohol, drugs, or any combination of alcohol and drugs in the
15 person. The peace officer may not unreasonably impede the person's right to obtain an independent blood test.
16 The peace officer may but has no duty to transport the person to a medical facility or otherwise assist the
17 person in obtaining the test. The cost of an independent blood test is the sole responsibility of the person
18 requesting the test. The failure or inability to obtain an independent test by a person does not preclude the
19 admissibility in evidence of any test given at the direction of a peace officer.

20 (3) Upon the request of the person tested, full information concerning any test given at the
21 direction of the peace officer must be made available to the person or the person's attorney.

22 (4) A physician, registered nurse, or other qualified person acting under the supervision and
23 direction of a physician or registered nurse does not incur any civil or criminal liability as a result of the proper
24 administering of a blood test when requested in writing by a peace officer to administer a test.

25 (5) The department in cooperation with any appropriate agency shall adopt uniform rules for the
26 giving of tests and may require certification of training to administer the tests as considered necessary.

27 (6) If a peace officer has probable cause to believe that a person has violated 61-8-1002, meets
28 the definition of aggravated driving under the influence as defined in 61-8-1001, or has violated 61-8-805 and a

sample of blood, breath, oral fluid, urine, or other bodily substance is taken from that person for any reason, a portion of that sample sufficient for analysis must be provided to a peace officer if requested for law enforcement purposes and upon issuance of a subpoena as provided in 46-4-301."

Section 6. Section 61-8-1032, MCA, is amended to read:

"61-8-1032. Mandatory suspension of license following certain implied consent action. (1) The department shall suspend an individual's driver license if the department receives a report for an implied consent violation from law enforcement or another reporting jurisdiction that, pursuant to 61-8-1016, an individual has refused a test or tests of the person's blood, breath, oral fluid, urine, or other bodily substance for determining any measured amount or detected presence of alcohol or drugs in the person's body.

(2) (a) Except as permitted by law, a person whose license or privilege to drive a motor vehicle on the public highways has been suspended may not have the license or privilege renewed or restored until the revocation or suspension duration has been completed.

(b) The department shall apply the appropriate sanction to the driver based on the reported conviction and prior offenses.

(c) The driver shall pay all reinstatement and administrative fees owed to the department before a driver's license or privilege to drive is restored.

(d) The duration of the suspension commences from the date of violation.

(e) If a person refuses tests for the same incident, the department may not consider each a separate refusal for purposes of suspension.

(f) The department may not issue a probationary license during the suspension issued under this part.

(3) (a) A person who has an implied consent violation shall pay the department an administrative fee of \$300, which must be deposited in the state special revenue account established pursuant to subsection (3)(b).

(b) There is a blood-draw search warrant processing account in the state special revenue fund established pursuant to 17-2-102(1)(b). Money provided to the department of justice pursuant to this subsection

(3) must be deposited in the account and may be used only for providing forensic analysis of a driver's blood or

breath to determine the presence of alcohol or drugs.

(4) (a) Upon receiving a report of an implied consent violation, the department shall:

(i) for a first violation, suspend the driver's license or driving privilege for 6 months with no provision for a restricted probationary license; or

(ii) for a second or subsequent violation within 5 years of a previous refusal, as determined from the records of the department, suspend the driver's license or driving privilege for 1 year with no provision for a restricted probationary license.

(b) If a person who refuses to submit to one or more tests under this section is the holder of a commercial driver's license, in addition to any action taken against the driver's noncommercial driving privileges, the department shall:

(i) upon a first refusal, suspend the person's commercial driver's license for 1 year; and

(ii) upon a second or subsequent refusal, suspend the person's commercial driver's license for life, subject to department rules adopted to implement federal rules allowing for license reinstatement, if the person is otherwise eligible, upon completion of a minimum suspension period of 10 years. If the person has a prior conviction of a major offense listed in 61-8-802(2) arising from a separate incident, the conviction has the same effect as a previous testing refusal.

(5) A nonresident driver's license seized under this section must be sent by the department to the licensing authority of the nonresident's home state with a report of the nonresident's refusal to submit to one or more tests.

(6) The department may recognize the seizure of a license of a tribal member by a peace officer acting under the authority of a tribal government or an order issued by a tribal court suspending, revoking, or reinstating a license or adjudicating a license seizure if the actions are conducted pursuant to tribal law or regulation requiring alcohol or drug testing of motor vehicle operators and the conduct giving rise to the actions occurred within the exterior boundaries of a federally recognized Indian reservation in this state. Action by the department under this subsection is not reviewable under 61-8-1017."

Section 7. Section 67-1-211, MCA, is amended to read:

"67-1-211. Alcohol concentration standards -- evidence admissible -- administration of tests.

(1) If a person acting or attempting to act as a crewmember of an aircraft has an alcohol concentration, as defined in 61-8-1001, of 0.04% by weight or more, it may be inferred that the person is under the influence of alcohol and is in violation of 67-1-204.

(2) Evidence of any measured amount or detected presence of alcohol in the person at the time of the act alleged under subsection (1) and any other competent evidence bearing on the question of whether the person was under the influence of alcohol, drugs, or a combination of the two at the time of the act alleged is admissible in any criminal action or proceeding arising out of acts alleged to have been committed in violation of 67-1-204.

(3) In any criminal action or proceeding arising out of acts alleged to have been committed in violation of 67-1-204, the court or jury may consider federal regulations governing aeronautics.

(4) A person who operates an aircraft over the lands and waters of this state is considered to have given consent to a test of the person's blood, breath, oral fluid, or urine for the purpose of determining any measured amount or detected presence of alcohol or drugs in the person's body if arrested by a peace officer for operating, attempting to operate, or being in actual physical control of an aircraft while under the influence of alcohol, drugs, or a combination of the two. The test must be administered at the direction of a peace officer who has reasonable grounds to believe the person was operating, attempting to operate, or in actual physical control of an aircraft while under the influence of alcohol, drugs, or a combination of the two. The arresting officer may designate which of the tests must be administered. A person who is unconscious or who is otherwise in a condition rendering the person incapable of refusal is considered not to have withdrawn the consent provided by this subsection.

(5) If a person charged with a violation of 67-1-204 refuses to submit to a test of the person's blood, breath, oral fluid, or urine for the purpose of determining any measured amount or detected presence of alcohol in the person's body, a test will not be given, but proof of refusal is admissible in any criminal action or proceeding arising out of acts alleged to have been committed in violation of 67-1-204.

(6) The provisions relating to administration of tests provided in 61-8-1019 and the definition of alcohol concentration provided in 61-8-1001 apply to any testing done to determine any measured amount or detected presence of alcohol in a person and the alcohol concentration of a person charged with violation of 67-1-204."

1

2 NEW SECTION. **Section 8. Effective date.** [This act] is effective on passage and approval.

3

- END -

AMENDED

SENATE BILL NO. 13

INTRODUCED BY K. REGIER

BY REQUEST OF THE LAW AND JUSTICE INTERIM COMMITTEE

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING ADDITIONAL TYPES OF BODILY FLUIDS TO TEST FOR THE PRESENCE OF DRUGS IN DRIVING WHILE UNDER THE INFLUENCE CASES; AMENDING SECTIONS 23-2-535, 61-8-1010, 61-8-1016, 61-8-1018, 61-8-1019, 61-8-1032, AND 67-1-211, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 23-2-535, MCA, is amended to read:

"23-2-535. Alcohol concentration standards -- evidence admissible -- administration of tests.

(1) The inferences contained in 61-8-1002 apply to any criminal action or proceeding arising out of acts alleged to have been committed in violation of 23-2-523(2).

(2) Evidence of any measured amount or detected presence of alcohol or drugs in a person at the time of the act alleged, as shown by analysis of the person's blood, breath, oral fluid, or urine, and any other competent evidence bearing on the question of whether the person was under the influence of alcohol, drugs, or a combination of the two at the time of the act alleged is admissible in any criminal action or proceeding arising out of acts alleged to have been committed in violation of 23-2-523(2).

(3) If a person charged with violation of 23-2-523(2) refuses to submit to a test of the person's blood, breath, or urine for the purpose of determining any measured amount or detected presence of alcohol, none will be given, but proof of refusal is admissible in any criminal action or proceeding arising out of acts alleged to have been committed in violation of 23-2-523(2).

(4) The provisions relating to administration of tests provided in 61-8-1019 and the definition of alcohol concentration provided in 61-8-1001 apply to any testing done to a person charged with violation of 23-2-523(2).

(5) As used in 23-2-523(2), the term "under the influence" has the meaning provided in 61-8-

1 1001."

2

3 **Section 2.** Section 61-8-1010, MCA, is amended to read:

4 **"61-8-1010. Driving under influence -- ignition interlock device -- 24/7 sobriety and drug**

5 **monitoring program.** (1) For a person convicted of a first offense of driving under the influence, including 61-
6 8-1002, an offense that meets the definition of aggravated driving under the influence in 61-8-1001, or a similar
7 offense under the laws of another state, in addition to the punishments listed in 61-8-1007, the court may,
8 regardless of disposition and if a probationary license is recommended by the court, require the person to
9 comply with the conditions listed in subsection (2)(a) or (2)(b).

10 (2) On a second or subsequent conviction for a violation of driving under the influence, including
11 61-8-1002, an offense that meets the definition of aggravated driving under the influence in 61-8-1001, or a
12 similar offense under the laws of another state, or a second or subsequent conviction under 61-5-212 when the
13 reason for the suspension or revocation was that the person was convicted of a violation of driving under the
14 influence, including 61-8-1002, an offense that meets the definition of aggravated driving under the influence in
15 61-8-1001, or a similar offense under previous laws of this state or the laws of another state, or the suspension
16 was under 61-8-1016 or a similar law of another state for refusal to take a test for alcohol or drugs requested by
17 a peace officer who believed that the person might be driving under the influence, in addition to the
18 punishments listed in 61-8-1002 and 61-8-1007, the court shall ~~require the person:~~

19 (a) ~~require the person~~ to participate in the 24/7 sobriety and drug monitoring program provided for
20 in 44-4-1203 or require the person to participate in a court-approved alcohol or drug detection testing program
21 and to pay the fees associated with the program;

22 (b) if recommending that a probationary license be issued to the person, restrict the person to
23 driving only a motor vehicle equipped with a functioning ignition interlock device during the probationary period
24 and require the person to pay the reasonable cost of leasing, installing, and maintaining the device; or

25 (c) order that each motor vehicle owned by the person at the time of the offense be seized and
26 subjected to the forfeiture procedure provided under 61-8-1033. A vehicle used by a person as a common
27 carrier in the transaction of business as a common carrier is not subject to forfeiture unless it appears that the
28 owner or other person in charge of the vehicle consented to or was privy to the violation. A vehicle may not be

1 forfeited under this section for any act or omission established by the owner to have been committed or omitted
2 by a person other than the owner while the vehicle was unlawfully in the possession of a person other than the
3 owner in violation of the criminal laws of this state or the United States. Forfeiture of a vehicle encumbered by a
4 security interest is subject to the secured person's interest if the person did not know and could not have
5 reasonably known of the unlawful possession, use, or other act on which the forfeiture is sought.

6 (3) All court-approved alcohol or drug detection testing programs allowed under this section are
7 required to use the state's data management system pursuant to 44-4-1203."
8

9 **Section 3.** Section 61-8-1016, MCA, is amended to read:

10 **"61-8-1016. Implied consent -- blood or breath tests for alcohol, blood or oral fluid for drugs, or**
11 **testing for both -- alcohol and drugs using recognized methods for each -- refusal to submit to test --**
12 **administrative license suspension.** (1) (a) A person who operates or is in actual physical control of a vehicle
13 or commercial motor vehicle upon the ways of this state open to the public is considered to have given consent
14 to a test or tests of the person's blood or breath for the purpose of determining any measured amount or
15 detected presence of alcohol or blood or oral fluid for the purpose of determining any measured amount or
16 detected presence of drugs in the person's body.

17 (b) The tests in subsection (1)(a) include but are not limited to a preliminary alcohol screening test
18 of the person's breath for the purpose of estimating the person's alcohol concentration.

19 (c) A preliminary alcohol screening test may not be conducted or requested under this section
20 unless both the peace officer and the instrument used to conduct the test have been certified by the department
21 pursuant to rules adopted under the authority of 61-8-1019(5).

22 (d) The person's obligation to submit to a test in subsection (1)(a) is not satisfied by the person
23 submitting to a preliminary alcohol screening test pursuant to this section.

24 (2) (a) The test or tests must be administered at the direction of a peace officer when:

25 (i) the peace officer has particularized suspicion to believe that the person has been driving or has
26 been in actual physical control of a vehicle upon ways of this state open to the public while under the influence
27 of alcohol, drugs, or a combination of the two and the person has been detained for a violation of driving under
28 the influence as provided in 61-8-1002 or an offense that meets the definition of aggravated driving under the

SENATE BILL NO. 13

INTRODUCED BY K. REGIER

BY REQUEST OF THE LAW AND JUSTICE INTERIM COMMITTEE

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING ADDITIONAL TYPES OF BODILY FLUIDS TO TEST FOR THE PRESENCE OF DRUGS IN DRIVING WHILE UNDER THE INFLUENCE CASES; AMENDING SECTIONS 23-2-535, 61-8-1010, 61-8-1016, 61-8-1018, 61-8-1019, 61-8-1032, AND 67-1-211, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 23-2-535, MCA, is amended to read:

"23-2-535. Alcohol concentration standards -- evidence admissible -- administration of tests.

(1) The inferences contained in 61-8-1002 apply to any criminal action or proceeding arising out of acts alleged to have been committed in violation of 23-2-523(2).

(2) Evidence of any measured amount or detected presence of alcohol or drugs in a person at the time of the act alleged, as shown by analysis of the person's blood, breath, oral fluid, or urine, and any other competent evidence bearing on the question of whether the person was under the influence of alcohol, drugs, or a combination of the two at the time of the act alleged is admissible in any criminal action or proceeding arising out of acts alleged to have been committed in violation of 23-2-523(2).

(3) If a person charged with violation of 23-2-523(2) refuses to submit to a test of the person's blood, breath, or urine for the purpose of determining any measured amount or detected presence of alcohol, none will be given, but proof of refusal is admissible in any criminal action or proceeding arising out of acts alleged to have been committed in violation of 23-2-523(2).

(4) The provisions relating to administration of tests provided in 61-8-1019 and the definition of alcohol concentration provided in 61-8-1001 apply to any testing done to a person charged with violation of 23-2-523(2).

(5) As used in 23-2-523(2), the term "under the influence" has the meaning provided in 61-8-

1 1001."

2

3 **Section 2.** Section 61-8-1010, MCA, is amended to read:

4 **"61-8-1010. Driving under influence -- ignition interlock device -- 24/7 sobriety and drug**

5 **monitoring program.** (1) For a person convicted of a first offense of driving under the influence, including 61-
6 8-1002, an offense that meets the definition of aggravated driving under the influence in 61-8-1001, or a similar
7 offense under the laws of another state, in addition to the punishments listed in 61-8-1007, the court may,
8 regardless of disposition and if a probationary license is recommended by the court, require the person to
9 comply with the conditions listed in subsection (2)(a) or (2)(b).

10 (2) On a second or subsequent conviction for a violation of driving under the influence, including
11 61-8-1002, an offense that meets the definition of aggravated driving under the influence in 61-8-1001, or a
12 similar offense under the laws of another state, or a second or subsequent conviction under 61-5-212 when the
13 reason for the suspension or revocation was that the person was convicted of a violation of driving under the
14 influence, including 61-8-1002, an offense that meets the definition of aggravated driving under the influence in
15 61-8-1001, or a similar offense under previous laws of this state or the laws of another state, or the suspension
16 was under 61-8-1016 or a similar law of another state for refusal to take a test for alcohol or drugs requested by
17 a peace officer who believed that the person might be driving under the influence, in addition to the
18 punishments listed in 61-8-1002 and 61-8-1007, the court shall require the person:

19 (a) to participate in the 24/7 sobriety and drug monitoring program provided for in 44-4-1203 or
20 require the person to participate in a court-approved alcohol or drug detection testing program and to pay the
21 fees associated with the program;

22 (b) if recommending that a probationary license be issued to the person, restrict the person to
23 driving only a motor vehicle equipped with a functioning ignition interlock device during the probationary period
24 and require the person to pay the reasonable cost of leasing, installing, and maintaining the device; or

25 (c) order that each motor vehicle owned by the person at the time of the offense be seized and
26 subjected to the forfeiture procedure provided under 61-8-1033. A vehicle used by a person as a common
27 carrier in the transaction of business as a common carrier is not subject to forfeiture unless it appears that the
28 owner or other person in charge of the vehicle consented to or was privy to the violation. A vehicle may not be

1 forfeited under this section for any act or omission established by the owner to have been committed or omitted
2 by a person other than the owner while the vehicle was unlawfully in the possession of a person other than the
3 owner in violation of the criminal laws of this state or the United States. Forfeiture of a vehicle encumbered by a
4 security interest is subject to the secured person's interest if the person did not know and could not have
5 reasonably known of the unlawful possession, use, or other act on which the forfeiture is sought.

6 (3) All court-approved alcohol or drug detection testing programs allowed under this section are
7 required to use the state's data management system pursuant to 44-4-1203."
8

9 **Section 3.** Section 61-8-1016, MCA, is amended to read:

10 **"61-8-1016. Implied consent -- blood or breath tests for alcohol, blood or oral fluid for drugs, or**
11 **testing for both -- alcohol and drugs using recognized methods for each -- refusal to submit to test --**
12 **administrative license suspension.** (1) (a) A person who operates or is in actual physical control of a vehicle
13 or commercial motor vehicle upon the ways of this state open to the public is considered to have given consent
14 to a test or tests of the person's blood or breath for the purpose of determining any measured amount or
15 detected presence of alcohol or blood or oral fluid for the purpose of determining any measured amount or
16 detected presence of drugs in the person's body.

17 (b) The tests in subsection (1)(a) include but are not limited to a preliminary alcohol screening test
18 of the person's breath for the purpose of estimating the person's alcohol concentration.

19 (c) A preliminary alcohol screening test may not be conducted or requested under this section
20 unless both the peace officer and the instrument used to conduct the test have been certified by the department
21 pursuant to rules adopted under the authority of 61-8-1019(5).

22 (d) The person's obligation to submit to a test in subsection (1)(a) is not satisfied by the person
23 submitting to a preliminary alcohol screening test pursuant to this section.

24 (2) (a) The test or tests must be administered at the direction of a peace officer when:

25 (i) the peace officer has particularized suspicion to believe that the person has been driving or has
26 been in actual physical control of a vehicle upon ways of this state open to the public while under the influence
27 of alcohol, drugs, or a combination of the two and the person has been detained for a violation of driving under
28 the influence as provided in 61-8-1002 or an offense that meets the definition of aggravated driving under the

influence in 61-8-1001;

(ii) the person is under the age of 21 and the peace officer has particularized suspicion to believe that the person has been driving or in actual physical control of a vehicle in violation of 61-8-1002(1)(e); or

(iii) the peace officer has probable cause to believe that the person was driving or in actual physical control of a vehicle or commercial motor vehicle:

(A) in violation of driving under the influence, as provided in 61-8-1002, and the person has been placed under arrest;

(B) in violation of driving under the influence as provided in 61-8-1002, and the person has been involved in a motor vehicle crash or collision resulting in property damage;

(C) and the person has been involved in a motor vehicle accident or collision resulting in serious bodily injury, as defined in 45-2-101, or death; or

(D) in violation of driving under the influence as provided in 61-8-1002 and meets the definition of aggravated driving under the influence in 61-8-1001.

(b) A peace officer may designate which test or tests are administered.

(c) The peace officer shall inform the person of the right to refuse the test and that the refusal to submit to the test will result in the suspension for up to 1 year of that person's driver's license.

(d) A hearing as provided for in 61-8-1017 must be available. The issues in the hearing must be limited to determining whether a peace officer had a particularized suspicion that the person was in violation of 61-8-1002 or an offense meeting the definition of aggravated driving under the influence in 61-8-1001, and whether the person refused to submit to the test.

(e) If a person refuses a preliminary alcohol screening test and another test during the same incident, the department may not consider each a separate refusal for purposes of suspension of the person's driver's license.

(3) A person who is unconscious or who is otherwise in a condition rendering the person incapable of refusal is considered not to have withdrawn the consent requested in subsection (1).

(4) (a) If an arrested person refuses to submit to one or more tests requested and designated by the peace officer, the refused test or tests may not be given unless the person has refused to provide a breath, blood, urine, or other bodily substance in a prior investigation in this state or under a substantially similar statute

1 in another jurisdiction or the arrested person has a prior conviction or pending offense for a violation of 45-5-
2 104, 45-5-106, 45-5-205, or driving under the influence, including 61-8-1002, an offense that meets the
3 definition of aggravated driving under the influence in 61-8-1001, or a similar offense under previous laws of
4 this state or a similar statute in another jurisdiction.

5 (b) ~~Upon~~On the person's refusal to provide the breath, blood, urine, oral fluid, or other bodily
6 substance requested by the peace officer pursuant to subsection (1) and this subsection (4) may apply for a
7 search warrant to be issued pursuant to 46-5-224 to collect a sample of the person's blood or oral fluid for
8 testing.

9 (c) (i) ~~Upon~~On the person's refusal to provide a breath, blood, urine, oral fluid, or other bodily
10 substance, the peace officer shall, on behalf of the department, immediately seize the person's driver's license.
11 The peace officer shall immediately forward the license to the department, along with a report certified under
12 penalty of law stating which of the conditions set forth in subsection (2)(a) provides the basis for the testing
13 request and confirming that the person refused to submit to one or more tests requested and designated by the
14 peace officer. Upon receipt of the report, the department shall suspend the license for the period provided in
15 61-8-1032.

16 (ii) Upon seizure of a driver's license, the peace officer shall issue, on behalf of the department, a
17 temporary driving permit, which is effective 12 hours after issuance and is valid for 5 days following the date of
18 issuance, and shall provide the driver with written notice of the license suspension and the right to a hearing as
19 provided in 61-8-1017.

20 (iii) A nonresident driver's license seized under this section must be sent by the department to the
21 licensing authority of the nonresident's home state with a report of the nonresident's refusal to submit to one or
22 more tests.

23 (5) This section does not apply to tests, samples, and analyses of blood ~~or~~, breath, or urine used
24 for purposes of medical treatment or care of an injured motorist, related to a lawful seizure for a suspected
25 violation of an offense not in this part, or performed pursuant to a search warrant.

26 (6) This section does not prohibit the release of information obtained from tests, samples, and
27 analyses of blood ~~or~~, breath, or urine for law enforcement purposes as provided in 46-4-301 and 61-8-1019(6)."

28

Section 4. Section 61-8-1018, MCA, is amended to read:

"61-8-1018. Evidence admissible -- conditions of admissibility. (1) Upon the trial of a criminal action or other proceeding arising out of acts alleged to have been committed by a person in violation of driving under the influence, including 61-8-1002, an offense that meets the definition of aggravated driving under the influence in 61-8-1001, a similar offense under previous laws of this state or the laws of another state, or 61-8-805:

(a) evidence of any measured amount or detected presence of alcohol, drugs, or a combination of alcohol and drugs in the person at the time of a test, as shown by an analysis of the person's blood ~~or~~, breath, or oral fluid is admissible. A positive test result does not, in itself, prove that the person was under the influence of a drug or drugs at the time the person was in control of a vehicle. A person may not be convicted of a violation of 61-8-1002(1)(a) based on the presence of a drug or drugs in the person unless some other competent evidence exists that tends to establish that the person was under the influence of a drug or drugs while driving or in actual physical control of a motor vehicle within this state.

(b) a report of the facts and results of one or more tests of a person's blood ~~or~~, breath, or oral fluid is admissible in evidence if:

(i) a breath test, oral fluid screening test, or preliminary alcohol screening test was performed by a person certified by the forensic sciences division of the department to administer the test; or

(ii) a blood sample was analyzed in a laboratory operated or certified by the department or in a laboratory exempt from certification under the rules of the department and the blood was withdrawn from the person by a person competent to do so under 61-8-1019(1); and

(c) a report of the facts and results of a physical, psychomotor, or physiological assessment of a person is admissible in evidence if it was made by a person trained by the department or by a person who has received training recognized by the department.

(2) If the person under arrest refused to submit to one or more tests under 61-8-1016, whether or not a sample was subsequently collected for any purpose, proof of refusal is admissible in any criminal action or proceeding arising out of acts alleged to have been committed while the person was driving or in actual physical control of a vehicle upon the ways of this state open to the public while under the influence of alcohol, drugs, or a combination of alcohol and drugs. The trier of fact may infer from the refusal that the person was

1 under the influence. The inference is rebuttable.

2 (3) The provisions of this part do not limit the introduction of any other competent evidence bearing
3 on the question of whether the person was under the influence of alcohol, drugs, or a combination of alcohol
4 and drugs."

5

6 **Section 5.** Section 61-8-1019, MCA, is amended to read:

7 **"61-8-1019. Administration of tests.** (1) Only a licensed physician, registered nurse, or other
8 qualified person acting under the supervision and direction of a physician or registered nurse may, at the
9 request of a peace officer, withdraw blood for the purpose of determining any measured amount or detected
10 presence of alcohol, drugs, or any combination of alcohol and drugs in the person. This limitation does not
11 apply to the sampling of breath or oral fluid.

12 (2) In addition to any test administered at the direction of a peace officer, a person may request
13 that an independent blood sample be drawn by a physician or registered nurse for the purpose of determining
14 any measured amount or detected presence of alcohol, drugs, or any combination of alcohol and drugs in the
15 person. The peace officer may not unreasonably impede the person's right to obtain an independent blood test.
16 The peace officer may but has no duty to transport the person to a medical facility or otherwise assist the
17 person in obtaining the test. The cost of an independent blood test is the sole responsibility of the person
18 requesting the test. The failure or inability to obtain an independent test by a person does not preclude the
19 admissibility in evidence of any test given at the direction of a peace officer.

20 (3) Upon the request of the person tested, full information concerning any test given at the
21 direction of the peace officer must be made available to the person or the person's attorney.

22 (4) A physician, registered nurse, or other qualified person acting under the supervision and
23 direction of a physician or registered nurse does not incur any civil or criminal liability as a result of the proper
24 administering of a blood test when requested in writing by a peace officer to administer a test.

25 (5) The department in cooperation with any appropriate agency shall adopt uniform rules for the
26 giving of tests and may require certification of training to administer the tests as considered necessary.

27 (6) If a peace officer has probable cause to believe that a person has violated 61-8-1002, meets
28 the definition of aggravated driving under the influence as defined in 61-8-1001, or has violated 61-8-805 and a

sample of blood, breath, oral fluid, urine, or other bodily substance is taken from that person for any reason, a portion of that sample sufficient for analysis must be provided to a peace officer if requested for law enforcement purposes and upon issuance of a subpoena as provided in 46-4-301."

Section 6. Section 61-8-1032, MCA, is amended to read:

"61-8-1032. Mandatory suspension of license following certain implied consent action. (1) The department shall suspend an individual's driver license if the department receives a report for an implied consent violation from law enforcement or another reporting jurisdiction that, pursuant to 61-8-1016, an individual has refused a test or tests of the person's blood, breath, oral fluid, urine, or other bodily substance for determining any measured amount or detected presence of alcohol or drugs in the person's body.

(2) (a) Except as permitted by law, a person whose license or privilege to drive a motor vehicle on the public highways has been suspended may not have the license or privilege renewed or restored until the revocation or suspension duration has been completed.

(b) The department shall apply the appropriate sanction to the driver based on the reported conviction and prior offenses.

(c) The driver shall pay all reinstatement and administrative fees owed to the department before a driver's license or privilege to drive is restored.

(d) The duration of the suspension commences from the date of violation.

(e) If a person refuses tests for the same incident, the department may not consider each a separate refusal for purposes of suspension.

(f) The department may not issue a probationary license during the suspension issued under this part.

(3) (a) A person who has an implied consent violation shall pay the department an administrative fee of \$300, which must be deposited in the state special revenue account established pursuant to subsection (3)(b).

(b) There is a blood-draw search warrant processing account in the state special revenue fund established pursuant to 17-2-102(1)(b). Money provided to the department of justice pursuant to this subsection

(3) must be deposited in the account and may be used only for providing forensic analysis of a driver's blood or

breath to determine the presence of alcohol or drugs.

(4) (a) Upon receiving a report of an implied consent violation, the department shall:

(i) for a first violation, suspend the driver's license or driving privilege for 6 months with no provision for a restricted probationary license; or

(ii) for a second or subsequent violation within 5 years of a previous refusal, as determined from the records of the department, suspend the driver's license or driving privilege for 1 year with no provision for a restricted probationary license.

(b) If a person who refuses to submit to one or more tests under this section is the holder of a commercial driver's license, in addition to any action taken against the driver's noncommercial driving privileges, the department shall:

(i) upon a first refusal, suspend the person's commercial driver's license for 1 year; and

(ii) upon a second or subsequent refusal, suspend the person's commercial driver's license for life, subject to department rules adopted to implement federal rules allowing for license reinstatement, if the person is otherwise eligible, upon completion of a minimum suspension period of 10 years. If the person has a prior conviction of a major offense listed in 61-8-802(2) arising from a separate incident, the conviction has the same effect as a previous testing refusal.

(5) A nonresident driver's license seized under this section must be sent by the department to the licensing authority of the nonresident's home state with a report of the nonresident's refusal to submit to one or more tests.

(6) The department may recognize the seizure of a license of a tribal member by a peace officer acting under the authority of a tribal government or an order issued by a tribal court suspending, revoking, or reinstating a license or adjudicating a license seizure if the actions are conducted pursuant to tribal law or regulation requiring alcohol or drug testing of motor vehicle operators and the conduct giving rise to the actions occurred within the exterior boundaries of a federally recognized Indian reservation in this state. Action by the department under this subsection is not reviewable under 61-8-1017."

Section 7. Section 67-1-211, MCA, is amended to read:

"67-1-211. Alcohol concentration standards -- evidence admissible -- administration of tests.

(1) If a person acting or attempting to act as a crewmember of an aircraft has an alcohol concentration, as defined in 61-8-1001, of 0.04% by weight or more, it may be inferred that the person is under the influence of alcohol and is in violation of 67-1-204.

(2) Evidence of any measured amount or detected presence of alcohol in the person at the time of the act alleged under subsection (1) and any other competent evidence bearing on the question of whether the person was under the influence of alcohol, drugs, or a combination of the two at the time of the act alleged is admissible in any criminal action or proceeding arising out of acts alleged to have been committed in violation of 67-1-204.

(3) In any criminal action or proceeding arising out of acts alleged to have been committed in violation of 67-1-204, the court or jury may consider federal regulations governing aeronautics.

(4) A person who operates an aircraft over the lands and waters of this state is considered to have given consent to a test of the person's blood, breath, oral fluid, or urine for the purpose of determining any measured amount or detected presence of alcohol or drugs in the person's body if arrested by a peace officer for operating, attempting to operate, or being in actual physical control of an aircraft while under the influence of alcohol, drugs, or a combination of the two. The test must be administered at the direction of a peace officer who has reasonable grounds to believe the person was operating, attempting to operate, or in actual physical control of an aircraft while under the influence of alcohol, drugs, or a combination of the two. The arresting officer may designate which of the tests must be administered. A person who is unconscious or who is otherwise in a condition rendering the person incapable of refusal is considered not to have withdrawn the consent provided by this subsection.

(5) If a person charged with a violation of 67-1-204 refuses to submit to a test of the person's blood, breath, oral fluid, or urine for the purpose of determining any measured amount or detected presence of alcohol in the person's body, a test will not be given, but proof of refusal is admissible in any criminal action or proceeding arising out of acts alleged to have been committed in violation of 67-1-204.

(6) The provisions relating to administration of tests provided in 61-8-1019 and the definition of alcohol concentration provided in 61-8-1001 apply to any testing done to determine any measured amount or detected presence of alcohol in a person and the alcohol concentration of a person charged with violation of 67-1-204."

1

2 NEW SECTION. **Section 8. Effective date.** [This act] is effective on passage and approval.

3

- END -

AMENDED

SENATE BILL NO. 13

INTRODUCED BY K. REGIER

BY REQUEST OF THE LAW AND JUSTICE INTERIM COMMITTEE

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING ADDITIONAL TYPES OF BODILY FLUIDS TO TEST FOR THE PRESENCE OF DRUGS IN DRIVING WHILE UNDER THE INFLUENCE CASES; AMENDING SECTIONS 23-2-535, 61-8-1010, 61-8-1016, 61-8-1018, 61-8-1019, 61-8-1032, AND 67-1-211, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 23-2-535, MCA, is amended to read:

"23-2-535. Alcohol concentration standards -- evidence admissible -- administration of tests.

(1) The inferences contained in 61-8-1002 apply to any criminal action or proceeding arising out of acts alleged to have been committed in violation of 23-2-523(2).

(2) Evidence of any measured amount or detected presence of alcohol or drugs in a person at the time of the act alleged, as shown by analysis of the person's blood, breath, oral fluid, or urine, and any other competent evidence bearing on the question of whether the person was under the influence of alcohol, drugs, or a combination of the two at the time of the act alleged is admissible in any criminal action or proceeding arising out of acts alleged to have been committed in violation of 23-2-523(2).

(3) If a person charged with violation of 23-2-523(2) refuses to submit to a test of the person's blood, breath, or urine for the purpose of determining any measured amount or detected presence of alcohol, none will be given, but proof of refusal is admissible in any criminal action or proceeding arising out of acts alleged to have been committed in violation of 23-2-523(2).

(4) The provisions relating to administration of tests provided in 61-8-1019 and the definition of alcohol concentration provided in 61-8-1001 apply to any testing done to a person charged with violation of 23-2-523(2).

(5) As used in 23-2-523(2), the term "under the influence" has the meaning provided in 61-8-

1 under the influence. The inference is rebuttable.

2 (3) The provisions of this part do not limit the introduction of any other competent evidence bearing
3 on the question of whether the person was under the influence of alcohol, drugs, or a combination of alcohol
4 and drugs."

5

6 **Section 5.** Section 61-8-1019, MCA, is amended to read:

7 **"61-8-1019. Administration of tests.** (1) Only a licensed physician, registered nurse, or other
8 qualified person acting under the supervision and direction of a physician or registered nurse may, at the
9 request of a peace officer, withdraw blood for the purpose of determining any measured amount or detected
10 presence of alcohol, drugs, or any combination of alcohol and drugs in the person. This limitation does not
11 apply to the sampling of breath or oral fluid.

12 (2) In addition to any test administered at the direction of a peace officer, a person may request
13 that an independent blood sample be drawn by a physician or registered nurse for the purpose of determining
14 any measured amount or detected presence of alcohol, drugs, or any combination of alcohol and drugs in the
15 person. The peace officer may not unreasonably impede the person's right to obtain an independent blood test.
16 The peace officer may but has no duty to transport the person to a medical facility or otherwise assist the
17 person in obtaining the test. The cost of an independent blood test is the sole responsibility of the person
18 requesting the test. The failure or inability to obtain an independent test by a person does not preclude the
19 admissibility in evidence of any test given at the direction of a peace officer.

20 (3) Upon the request of the person tested, full information concerning any test given at the
21 direction of the peace officer must be made available to the person or the person's attorney.

22 (4) A physician, registered nurse, or other qualified person acting under the supervision and
23 direction of a physician or registered nurse does not incur any civil or criminal liability as a result of the proper
24 administering of a blood test when requested in writing by a peace officer to administer a test.

25 (5) The department in cooperation with any appropriate agency shall adopt uniform rules for the
26 giving of tests and may require certification of training to administer the tests as considered necessary.

27 (6) If a peace officer has probable cause to believe that a person has violated 61-8-1002, meets
28 the definition of aggravated driving under the influence as defined in 61-8-1001, or has violated 61-8-805 and a

sample of blood, breath, oral fluid, urine, or other bodily substance is taken from that person for any reason, a portion of that sample sufficient for analysis must be provided to a peace officer if requested for law enforcement purposes and upon issuance of a subpoena as provided in 46-4-301."

Section 6. Section 61-8-1032, MCA, is amended to read:

"61-8-1032. Mandatory suspension of license following certain implied consent action. (1) The department shall suspend an individual's driver license if the department receives a report for an implied consent violation from law enforcement or another reporting jurisdiction that, pursuant to 61-8-1016, an individual has refused a test or tests of the person's blood, breath, oral fluid, urine, or other bodily substance for determining any measured amount or detected presence of alcohol or drugs in the person's body.

(2) (a) Except as permitted by law, a person whose license or privilege to drive a motor vehicle on the public highways has been suspended may not have the license or privilege renewed or restored until the revocation or suspension duration has been completed.

(b) The department shall apply the appropriate sanction to the driver based on the reported conviction and prior offenses.

(c) The driver shall pay all reinstatement and administrative fees owed to the department before a driver's license or privilege to drive is restored.

(d) The duration of the suspension commences from the date of violation.

(e) If a person refuses tests for the same incident, the department may not consider each a separate refusal for purposes of suspension.

(f) The department may not issue a probationary license during the suspension issued under this part.

(3) (a) A person who has an implied consent violation shall pay the department an administrative fee of \$300, which must be deposited in the state special revenue account established pursuant to subsection (3)(b).

(b) There is a blood-draw search warrant processing account in the state special revenue fund established pursuant to 17-2-102(1)(b). Money provided to the department of justice pursuant to this subsection

(3) must be deposited in the account and may be used only for providing forensic analysis of a driver's blood or

MINUTES
MONTANA SENATE
68th LEGISLATURE - REGULAR SESSION
COMMITTEE ON (S) JUDICIARY

Call to Order: Chair Sen. Keith Regier-R, on January 05, 2023 at 9:01 AM, in 303

ROLL CALL

Members Present: Sen. Keith Regier, Chair (R)
Sen. Jen Gross, Vice Chair (D)
Sen. Barry Usher, Vice Chair (R)
Sen. Bob Brown (R)
Sen. Daniel Emrich (R)
Sen. Chris Friedel (R)
Sen. Steve Hinebaugh (R)
Sen. Kathy Kelker (D)
Sen. Theresa Manzella (R)
Sen. Susan Webber (D)

Members Excused: Sen. Andrea Olsen (D)

Staff Present: Grace Gibney, Secretary
Madelyn Krezowski, Attorney

Audio Committees: These minutes are in outline form only. They provide a list of participants and a record of official action taken by the committee. The link to the audio recording of the meeting is available on the Legislative Branch website.

Committee Business Summary:

Hearing & Date Posted:

SB 12 12/12/2022
SB 13 12/12/2022
SB 19 12/12/2022
SB 38 01/02/2023
SB 44 01/02/2023

Executive Action:

HEARING ON SB 44 - Revise laws pertaining to court administration of certain civil cases

Opening Statement:

09:02:40 Sen. Jason Small (R), SD 21, opened the hearing on SB 44, Revise laws pertaining to court administration of certain civil cases.

Proponent Testimony:

09:05:16 Beth Baker, Supreme Court Justice, Montana Access to Justice Commission (ATJC)

09:17:44 Aimee Grmoljez, Partner, Crowley Fleck Law Firm

09:25:19 Sean Slanger, Montana Defense Trial Lawyers Association (MDTL), Montana State Bar Association

09:26:03 Charles Robison, Montana Chamber of Commerce

09:26:33 Rebecca Myers, Montana Magistrates Association

09:26:55 Jessie Luther, Montana Association of Clerks of District Court (MACDC)

09:27:19 Al Smith, Montana Trial Lawyers Association (MTLA)

09:28:08 Alissa Chambers, Montana Justice Foundation (MJF)

09:29:32 Paul Kirgis, self

Opponent Testimony:

09:32:47 John Sinrud, President, Montana Landlords Association (MLA)

[EXHIBIT\(230105JUSa1\)](#)

Informational Witness Testimony:

None

Questions from Committee:

09:44:07 Sen. Kathy Kelker

09:46:22 Justice Beth Baker, ATJC

09:48:57 Sen. Keith Regier

09:53:13 Justice Beth Baker, ATJC

09:53:45	Alison Paul, Executive Director, Montana Legal Services Association (MLSA)
09:55:16	Sen. Chris Friedel
09:59:49	Justice Beth Baker, ATJC
10:00:35	Sen. Theresa Manzella
10:01:08	Alison Paul, MLSA
10:02:21	Sen. Daniel Emrich
10:05:04	Justice Beth Baker, ATJC
10:06:04	Sen. Jen Gross
10:06:34	Justice Beth Baker, ATJC
10:07:53	Sen. Susan Webber
10:08:20	Justice Beth Baker, ATJC
10:09:48	Sen. Bob Brown
10:10:13	Justice Beth Baker, ATJC
10:11:49	Sen. Chris Friedel
10:12:13	John Sinrud, MLA
10:15:04	Sen. Chris Friedel
10:15:51	Justice Beth Baker, ATJC
10:16:29	Sen. Jen Gross
10:18:05	Sean Slanger, MDTL, Montana State Bar
10:18:48	Sen. Susan Webber
10:19:21	Justice Beth Baker, ATJC
10:19:57	Paul Kirgis, self
10:21:46	Sen. Susan Webber
10:22:00	Paul Kirgis, self

10:22:43 Sen. Barry Usher

10:28:48 Justice Beth Baker, ATJC

Closing Statement:

10:29:03 Sen. Jason Small (R), SD 21, closed the hearing on SB 44.

HEARING ON SB 12 - Revising laws on public defender representation related to local ordinances

Opening Statement:

10:31:08 Sen. Ryan Lynch (D), SD 76, opened the hearing on SB 12, Revising laws on public defender representation related to local ordinances.

Discussion:

10:31:25 Sen. Theresa Manzella left the meeting.

Proponent Testimony:

None

Opponent Testimony:

10:33:24 Ben Halverson, Attorney, City of Billings

[EXHIBIT\(230105JUSa2\)](#)

[EXHIBIT\(230105JUSa3\)](#)

[EXHIBIT\(230105JUSa4\)](#)

10:39:37 Thomas Jodoin, Deputy Director, Montana League of Cities and Towns (MLCT)

Informational Witness Testimony:

10:42:03 Brett Schandelson,, Director, Office of State Public Defender

Questions from Committee:

10:42:30 Sen. Chris Friedel

10:44:43 Ben Halverson, City of Billings

10:45:01 Sen. Kathy Kelker

10:46:52 Sen. Ryan Lynch
10:47:48 Sen. Daniel Emrich
10:48:10 Sen. Ryan Lynch

Closing Statement:

10:48:28 Sen. Ryan Lynch (D), SD 76, closed the hearing on SB 12.

HEARING ON SB 38 - Generally revise sex offender level designations

Opening Statement:

10:51:10 Sen. Bob Brown (R), SD 13, opened the hearing on SB 38, Generally revise sex offender level designations.

Proponent Testimony:

10:51:50 Alan Doane, Attorney General's Office, Department of Justice (DOJ)
10:53:01 Suzanne Anders, Montana Department of Justice, Division of Criminal Investigation (DOJ)

Opponent Testimony:

10:54:14 Maggie Bornstein, American Civil Liberties Union of Montana (ACLU)

Informational Witness Testimony:

10:58:05 Anne Dormady, Crime Information Bureau Chief, Montana Division of Criminal Investigation, Department of Justice (DOJ)
10:58:28 David Ortley, Deputy Attorney General, Department of Justice (DOJ)
10:58:49 Clemente Arciga, self/proponent

Questions from Committee:

11:00:47 Sen. Jen Gross
11:01:36 Anne Dormady, DOJ
11:05:49 Suzanne Anders, DOJ
11:07:37 Sen. Daniel Emrich

11:08:19 Suzanne Anders, DOJ
11:09:09 Sen. Chris Friedel
11:11:58 Suzanne Anders, DOJ
11:12:28 Sen. Chris Friedel
11:13:58 Sen. Kathy Kelker
11:16:07 Suzanne Anders, DOJ

Closing Statement:

11:16:30 Sen. Bob Brown (R), SD 13, closed the hearing on SB 38.

HEARING ON SB 13 - Revise DUI laws related to admissible tests for presence of drugs

Opening Statement:

11:20:05 Sen. Keith Regier (R), SD 3, opened the hearing on SB 13, Revise DUI laws related to admissible tests for presence of drugs.

Proponent Testimony:

11:21:53 Jessie Luther, Association of Montana Troopers (AMT)
11:23:23 Dan Smith, Montana Police Protective Association (MPPA)

Opponent Testimony:

11:23:54 Kate Cholewa, Montana Cannabis Industry Association

[EXHIBIT\(230105JUSa5\)](#)

11:25:23 Marilee Watne, Welcome Back Committee (WB)

Informational Witness Testimony:

11:27:27 Brett Schandelson,, Director, Office of State Public Defender

Questions from Committee:

11:27:51 Sen. Chris Friedel
11:29:03 Marilee Watne, WB

11:29:28 Sen. Chris Friedel
11:31:44 Dan Smith, MPPA
11:32:05 Sen. Susan Webber
11:34:14 Jessie Luther, AMT
11:34:33 Sen. Daniel Emrich
11:36:10 Jessie Luther, AMT

Closing Statement:

11:37:50 Sen. Keith Regier (R), SD 3, closed the hearing on SB 13.

HEARING ON SB 19 - Generally revise disorderly conduct sentencing laws

Opening Statement:

11:38:15 Sen. Keith Regier (R), SD 3, opened the hearing on SB 19, Generally revise disorderly conduct sentencing laws.

Proponent Testimony:

11:40:51 Dan Smith, Montana Police Protective Association (MPPA)
11:42:29 Scott Twito, Criminal Justice Oversight Council (CJOC)
[EXHIBIT\(230105JUSa6\)](#)
11:48:27 Sheriff Ross Canen, Criminal Justice Oversight Council (CJOC), Montana Sheriffs and Peace Officers Association (MSPOA)

Opponent Testimony:

11:50:06 Maggie Bornstein, American Civil Liberties Union of Montana (ACLU)
11:52:55 Marilee Watne, self
11:55:40 Benny Lacayo, self
11:58:30 Casey Hugs, self
12:06:34 Hannah Pate, Montana Women Vote

Informational Witness Testimony:

12:08:27 Brett Schandelson, Director, Office of State Public Defender

Questions from Committee:

12:08:53 Sen. Kathy Kelker

12:10:32 Scott Twito, CJOC

12:11:51 Sen. Chris Friedel

12:15:39 Scott Twito, CJOC

12:16:31 Sen. Jen Gross

12:17:47 Sen. Keith Regier-R

Closing Statement:

12:18:25 Sen. Keith Regier (R), SD 3, closed the hearing on SB 19.

ADJOURNMENT

Adjournment: 12:19:31

Grace Gibney, Secretary

Additional Documents: [EXHIBIT\(230105JUSaad\)](#)

**Montana Department of Justice Proposed Amendments to Montana
Marijuana Regulation and Taxation Act**

Amendment 1

Placed into Section 16-12-108 pg. 40, Limitations of Act

“Unless specifically exempted by this chapter, the provisions of title 45, chapter 9 continue to be enforceable.”

Purpose of Amendment 1:

From law enforcement perspective the big concern is clarifying that amounts of marijuana that are greater than those provided in the Act, are still subject to criminal law provisions and criminal prosecution.

Both Colorado and Washington have a specific provision making this declaration.

It would be helpful to specify what the Act does not protect – existing criminal statutes are still applicable for possessing large quantities manufacturing, distributing, or possessing with the intent to distribute outside of Title 16.

Amendment 2:

Page 56(1)(c); Page 58; Page 60(b) Page 61(e); Page 184(3)

Strike from the bill all “name based background checks”. Make all background checks fingerprint backgrounds.

Purpose of Amendment 2:

Strike all named based background checks because it does not accomplish anything. Names based background checks are not accurate, the federal government does not use them, and it would only include criminal history within Montana.

Amendment 3:

Placed into 16-12-104(10) bottom of page 23.

“... a political subdivision. The department may also provide the information to the State Fire Marshall.”

Purpose of Amendment 3:

Fire inspectors need a list of locations of licensees to carry out fire inspections

Example: Page 23: (10) does not allow the Department to disclose a physical location or address, except with another state agency. It is not apparent that this includes the Fire Marshal for purposes of inspection.

Proposed Amendment 4:

Placed into 16-12-104(12), page 24:

Add the word **legal** before identification.

Purpose of Proposed Amendment 4:

To expressly state that the identification provided should be legal identification. Such as Driver's license, State ID, birth certificate.

Proposed Amendment 5:

Placed into 50-46-327(7) bottom of page 201-insert in last line.

“The department may receive the results of this investigation even though the information may constitute confidential criminal justice information as defined in Section 44-5-103(3).”

Purpose of Proposed Amendment 5:

To ensure that the confidential criminal justice provisions in Section 44-5-103(3) do not interfere with the department's ability to obtain the investigations referenced in the into 50-46-327(7).

Proposed Amendment 6:

Section 61-8-411(1)(a) and Section 61-8-411(1)(b) pg. 252

Strike "or oral fluid" from each of the above sections.

Purpose of Proposed Amendment 6:

Scott Larson, Director of the Montana State Crime Lab does not believe that the scientific reliability of oral fluid tests has been established.

Proposed Amendment 7:

Section 61-8-404(1)(b)(ii), pg. 245

Strike the entire contents of (ii) (oral fluid test)

Purpose of Proposed Amendment 7:

Scott Larson, Director of the Montana State Crime Lab indicated that the process of certifying the fluid tests would be novel to the crime lab and would be costly. Moreover, this is a preliminary test and would not be substantive proof at trial of guilt. There would still be a need to obtain search warrant to draw blood.



2023 Session

Additional Documents

May include the following:

- Business Report
- Roll Call -Attendance
- Standing Committee Reports
- Tabled Bills
- Fiscal Reports [if any]
- Roll Call Votes
- Proxy's
- Visitors sign in sheet.
- Informational Item's
- Witness Statements
- Zoom/Internet Testimony Information
- Any other type of documents such as:
@ Petitions, {if any} Emails, all documents given to
Committee Secretary after meeting. The original
exhibit/items are on file at the Montana Historical
Society and may be viewed there.

BUSINESS REPORT
MONTANA SENATE
REGULAR
(S) Judiciary

Date: 01/05/2023

Time: 9:00 AM

Place: Capitol

Room: 303

BILLS and RESOLUTIONS HEARD:

SB 12 Revising laws on public defender representation related to local ordinances - Sen. Ryan Lynch

SB 13 Revise DUI laws related to admissible tests for presence of drugs - Sen. Keith Regier

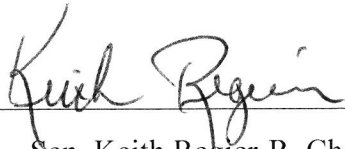
SB 19 Generally revise disorderly conduct sentencing laws - Sen. Keith Regier

SB 38 Generally revise sex offender level designations - Sen. Bob Brown

SB 44 Revise laws pertaining to court administration of certain civil cases - Sen. Jason Small

EXECUTIVE ACTION TAKEN: None

Comments:



Sen. Keith Regier-R, Chair

Senate
Roll Call
(S) Judiciary

DATE: 01/05/2023

TIME: 9:00 AM

<u>NAME</u>	<u>PRESENT</u>	<u>ABSENT/EXCUSED</u>
Usher, Barry	X	
Gross, Jen	X	
Hinebauch, Steve	X	
Emrich, Daniel	X	
Webber, Susan	X	
Manzella, Theresa	X	
Olsen, Andrea		X
Brown, Bob	X	
Friedel, Chris	X	
Kelker, Kathy	X	
Regier, Keith	X	

VISITORS REGISTER

MONTANA SENATE JUDICIARY COMMITTEE

Date: 1-5-22 Bill No: SB 38Sponsor: Brown
(Insert Short Title)

Please print ~ Please print ~ Please print ~ Please print

NAME	REPRESENTING	Support	Oppose	Informat'l
Suzanne Anders	DOJ	✓		✓
Anne Dormady	DOJ	✓		✓
DAVID ORTLEY	DOJ	✓		✓
Alan Dornz	DOJ	✓		
Merilee Watne	WB			✓
Fuh Z	WB			✓

Please leave prepared testimony with Committee Secretary. Witness Statement
Forms are available if you prefer to submit written testimony.

VISITORS REGISTER

MONTANA SENATE JUDICIARY COMMITTEE

Date: 1-5-22 Bill No: SB44Sponsor: Sen. Small
(Insert Short Title)

Please print ~ Please print ~ Please print ~ Please print

NAME	REPRESENTING	Support	Oppose	Informat'l
_____	_____	_____	_____	_____
Boeth Baker	MT Access to Justice Comm	✓		
Dan Smith	MT Police Prot. Assn			
Alissa Chambers	MT Justice Foundation	✓		
THOMAS JADWIN	MTCT		1	
John S. RUD	MT LANDLORDS ASSOC.		X	
Maggie R				
Rebecca Hays	MT Magistrates	X		
Bob Holverson	City of Bozeman State Bar	X		
Sean Slange	Montana State Bar Montana Defense Trial Lawyers	X		
Jessie Luther	MACDC	X		
Al Smith	MTLA	X		
Charles Robison	MT Chamber	✓		
Jake Brown	Shelter WF	U		
_____	_____	_____	_____	_____

Please leave prepared testimony with Committee Secretary. Witness Statement
Forms are available if you prefer to submit written testimony.

Hello Chairman Reiger and Grace,

This email contains follow up information to questions that were posed during the hearing on SB 13. If you could please pass along to the committee, I would appreciate it. Thank you.

Question: What is the dissipation rate of alcohol in the body?

Answer: Regarding the metabolism of drugs in the body... alcohol is actually the anomaly as it has a fairly linear absorption and elimination rate. This is roughly .01 BAC (or one drink) per hour.

Question: How many oral fluid tests is the \$36,000 cost based on in the fiscal note?

Answer: Page 2 of the fiscal note, assumption 3, estimates 1,240 oral fluid tests would be used each year and cost MHP \$31,000. Assumption 4 includes \$5,000 for travel costs to provide training on oral fluid testers.

Question: Is 1,240 oral fluid tests enough?

Answer: 1,240 tests is similar to a number of tests that was projected in year one of a four year rollout of the instrument to the highway patrol. It is unknown currently what number may be needed for permanent deployment of the oral fluid testers, but it is assumed that the number will increase over time.

Question: What is the level of THC present to be intoxicated?

Answer: MCA s. 61-8-1002 provides the DUI/DUID offense. Subsection (1)(d) provides: "(d) a noncommercial vehicle or commercial motor vehicle within this state while the person's delta-9-tetrahydrocannabinol level, excluding inactive metabolites, as shown by analysis of the person's blood or other bodily substance, is 5 ng/ml or more;" Unlike alcohol, there is not the same body of research that shows a consistent relationship between the magnitude of impairment and THC concentrations in the body. As a screening device, oral fluid tests are generally set at a cut off of 25 ng/ml to detect the presence of THC in the body. The level is set to avoid false positives, especially those from passive cannabis exposure. It must be noted that 5 ng/ml blood THC concentration is not the same as a 5 ng/ml oral fluid concentration, and a blood test would still be required to determine an evidentiary amount of THC in the body for charging under the statute.

Question: Are other levels of drugs specified for DUID?

Answer: Montana statute only provides specific levels of alcohol and THC to establish impairment for driving under the influence offenses. No other specific levels of drugs are included in statute. It is uncommon for states to have statutory per se levels for various drugs.



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Access to Justice Commission – SB 44 – Improving Family and Housing Cases

What is the Access to Justice Commission?

- Created by the Supreme Court in 2012, the Commission has 18 members, representing the legislature, state and local courts, the Attorney General's office, tribal communities, the State Bar, the business community, the law school, and legal service providers.
- The Commission evaluates the ability of Montanans to access our court system, engages in long-range planning, and coordinates efforts to improve efficiencies to help all court users to get their legal issues addressed.

What will this legislation do?

- Creates a fund to provide alternative dispute resolution, legal information, and legal assistance to ordinary Montanans who cannot afford an attorney to help with family- or housing-related civil legal problems.
- These are issues like protecting survivors from domestic abuse, securing child support for parents, and facilitating resolution of landlord-tenant disputes.

Who will pay?

- This proposal does not raise taxes and does not take money from the general fund.
- It raises court filing fees in certain civil cases filed in district courts that have had stagnant filing fees for decades.
- It will not affect fees in justices courts or in cases such as probate, adoption, or dissolution of marriage.
- Only people using the court system who can afford to pay a filing fee will pay. People unable to pay a filing fee will still be able to get a fee waiver.

Why do we need this?

Montana's justice system faces significant challenges:

- First, many Montanans are coming to court on their own with life-crisis situations involving basic human needs that the courts must address;
- Second, the resulting inefficiencies and pressures on the court system bring hardship to everyone else who is waiting their turn in a crowded docket, and it becomes more and more difficult to give each case the consideration it deserves.
- Third, court-connected mediation programs work. When parents craft their own parenting plans, they are less likely to return to court for contempt or modification.

Who is eligible to receive funds?

- Court-connected mediation and alternative dispute resolution programs and non-profit organizations or Montana law school clinics that assist persons of limited means with family- or housing-related issues may apply for funding under this program.

SB 44 – Improving the Administration of Family and Housing Cases

Supporting Information

District Court Caseloads

- Domestic Relations cases average between 15 and 20 percent of district court filings. Although filings were down in 2021—likely attributable to the Covid-19 pandemic—case filings are back up in 2022 and on track for close to 10,000 total cases by the end of the calendar year.
- The Workload Assessment Study for Montana District Court Judicial Officers has just been updated for the first time since 2014. Conducted by the National Center for State Courts, it determines a case weight for each case type category by collecting data from individual judges about how much time they are spending in each category. 95% of district court judges and standing masters participated in the time study, yielding a highly accurate account of judicial working time for case-related activities.
 - The study showed that Domestic Relations cases are the third most time-consuming case types, behind only Child Abuse and Neglect cases and Criminal cases.
 - Domestic Relations cases were the **only** area in which the time spent per case **increased** since 2014, rising from an average of 99 minutes to 140 minutes per case. Assuming 10,000 filings statewide, this is an average of **nearly 7,000** extra judge-hours per year. Judges report that the increased time is due to the volume of parties without legal counsel and the increasing complexity of their problems.
- Conservatively based on current data, if 10,000 new domestic relations cases are filed in a one-year period and just 15% are successfully diverted to and resolved through a court-connected mediation program, it would save an estimated **3,500** judge-hours annually.

Montana Legal Services Association Data (2021)

- MLSA is a non-profit organization that provides free civil legal services to low-income Montanans. Of the 3,900 cases it closed in 2021, **69%** involved either family law or housing issues, the case types included in LC0066.
- **95.9%** of all cases MLSA closed were resolved by settlement, administrative action, or brief advice and services. Only 31 (of 1,644) family law cases and 26 (of 1,058) housing cases went to a contested court action.

- Economic impact from MLSA's legal services shows that legal aid helps resolve legal problems and keep Montana families on their feet, which benefits the community at large:
 - Direct amounts to MLSA family law clients (primarily child support payments, property division, or maintenance in marriage dissolution actions): **\$874,933**
 - Cost savings from domestic violence advocacy: **\$2,814,000** for 938 Domestic Violence cases closed in 2021. (The estimate is based on a CDC study that survivors of physical assault in the previous 12 months experienced an average of 3.4 separate assaults, assumes that MLSA intervention and assistance prevents one assault per family, and applies an average of \$3,000 in prevented medical costs based on other studies.)
 - Cost Savings from Eviction Prevention: **\$5,802,072** (Conservatively estimates that only 50% of MLSA's low-income housing clients avoided homelessness—1,058 housing cases closed in 2021, multiplied by 50%, and multiplied by the median per person cost of shelter for homeless individuals of \$10,968. Cost savings estimate from US HUD.)
- MLSA has the resources to help only half the people who need services. (MLSA served only 3,820 of 8,201 requests that were not referred elsewhere).

Additional Documents

SENATE: Judiciary

Date: January 5

Bill No. SB44

THE SUPREME COURT OF MONTANA

**BETH BAKER
JUSTICE**

EMAIL: bbaker@mt.gov
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**JUSTICE BUILDING
215 NORTH SANDERS
PO BOX 203001
HELENA, MONTANA 59620-3001**

January 5, 2023

Senator Keith Regier
Senate Judiciary Committee
Montana State Capitol
Helena MT 59620

Re: Senate Bill 44

Dear Chairman Regier and Members of the Senate Judiciary Committee:

In response to questions at today's hearing, I advised the Committee that I would provide additional information on two points. First, the Chair asked how many landlord-tenant cases are filed each year. The following table shows the total number of civil cases filed in Justice Court over the past six years and, of those, how many were landlord-tenant disputes:

Year	Total Civil Cases Filed	Landlord-Tenant
2016	29,285	2,971
2017	30,291	3,009
2018	29,527	2,354
2019	32,116	2,500
2020	24,729	1,877
2021	25,929	1,897

It may well be that the dip in filings the previous two years was pandemic-related. We do not yet have the 2022 filing numbers, but I will pass those along as soon as they are compiled.

Second, Vice-Chair Usher asked about information for the pilot program conducted in Flathead County on mediation of family cases. The program was called E-RAMP, which stands for Early Resolution and Mediation Project. The data reported for the one-year pilot period (which concluded just before the onset of the Covid-19 pandemic) showed the following:

Senator Keith Regier
Senate Judiciary Committee
Page 2

56 cases were referred to E-RAMP during the pilot period (excluding cases that were discovered later not to meet preliminary criteria.) Of those, 28 cases (50%) were E-RAMP eligible.

- 18 eligible cases mediated to full settle (86% of mediated cases)
- 1 eligible case mediated to partial settle (5% of mediated cases)
- 3 eligible cases (10%) did not result in settlement on mediation day
- 2 eligible cases one party a no-show on mediation day
- 1 eligible case found an outside faith-based mediator
- 2 eligible cases were scheduled for mediation at the time of the report
- 1 case resolved prior to intake

28 cases (50%) were E-RAMP ineligible. Approximately 69% of these (30 cases) were ineligible either because of self-reported domestic violence or because one party was financially ineligible. As I mentioned at the hearing, we have since been working to refine the standards so that such cases would not be automatically ineligible.

For fully mediated cases, the time lapse between the date a case was contested (a response was filed) until resolution and closure was as follows:

- 50% mediated to full settlement in less than 60 days of response
- 39% mediated to full settlement in 60-90 days of response
- 11% mediated to full settlement in 90-120 days of response

The cases referred but not eligible for E-RAMP provide an interesting comparative analysis for assessing potential impact on court dockets. The time lapse between the date a case was closed (or remained open at the time of the report) was as follows:

- 17% closed within 60 days of response
- 6% closed within 60-90 days of response
- 23% closed in 9-12 months
- 34% remained open after 6 months

I hope this information is helpful. Please let me know if you need anything more.

Sincerely,



Beth Baker

c: Sen. Jason Small

Committee Members and Staff

MINUTES
MONTANA SENATE
68th LEGISLATURE - REGULAR SESSION
COMMITTEE ON (S) JUDICIARY

Call to Order: Chair Sen. Keith Regier-R, on January 12, 2023 at 9:01 AM, in 303

ROLL CALL

Members Present: Sen. Keith Regier, Chair (R)
Sen. Barry Usher, Vice Chair (R)
Sen. Bob Brown (R)
Sen. Daniel Emrich (R)
Sen. Chris Friedel (R)
Sen. Steve Hinebaugh (R)
Sen. Kathy Kelker (D)
Sen. Theresa Manzella (R)
Sen. Andrea Olsen (D)
Sen. Susan Webber (D)

Members Excused: Sen. Jen Gross (D)

Staff Present: Julianne Burkhardt, Attorney
Grace Gibney, Secretary

Audio Committees: These minutes are in outline form only. They provide a list of participants and a record of official action taken by the committee. The link to the audio recording of the meeting is available on the Legislative Branch website.

Committee Business Summary:

Hearing & Date Posted:

SB 134 01/09/2023

SB 135 01/09/2023

SB 136 01/10/2023

Executive Action:

SB 92 TO TABLE

SB 13 DO PASS AS AMENDED

SB 95 DO PASS AS AMENDED

SB 96 DO PASS

SB 136 DO PASS

HEARING ON SB 134 - Revise injunction laws

Opening Statement:

09:03:01 Sen. Steve Fitzpatrick (R), SD 10, opened the hearing on SB 134, Revise injunction laws.

Proponent Testimony:

None

Opponent Testimony:

None

Informational Witness Testimony:

None

Questions from Committee:

09:08:25 Sen. Kathy Kelker
09:09:23 Sen. Steve Fitzpatrick-R
09:10:50 Sen. Andrea Olsen
09:11:20 Sen. Steve Fitzpatrick-R
09:11:47 Sen. Keith Regier
09:12:06 Sen. Steve Fitzpatrick-R
09:13:22 Sen. Barry Usher
09:13:36 Sen. Steve Fitzpatrick-R
09:23:42 Recessed
10:01:31 Reconvened

Closing Statement:

09:15:13 Sen. Steve Fitzpatrick (R), SD 10, closed the hearing on SB 134.

HEARING ON SB 135 - Revise injunction laws

Opening Statement:

09:15:27 Sen. Steve Fitzpatrick (R), SD 10, opened the hearing on SB 135, Revise injunction laws.

Proponent Testimony:

None

Opponent Testimony:

None

Informational Witness Testimony:

None

Questions from Committee:

09:17:33 Sen. Andrea Olsen
09:18:12 Sen. Steve Fitzpatrick-R
09:18:51 Sen. Kathy Kelker
09:19:09 Sen. Steve Fitzpatrick-R
09:19:35 Sen. Barry Usher
09:20:09 Sen. Steve Fitzpatrick-R

Closing Statement:

09:20:28 Sen. Steve Fitzpatrick (R), SD 10, closed the hearing on SB 135.

HEARING ON SB 136 - Revise injunction laws

Opening Statement:

09:20:44 Sen. Steve Fitzpatrick (R), SD 10, opened the hearing on SB 136, Revise injunction laws.

Proponent Testimony:

None

Opponent Testimony:

None

Informational Witness Testimony:

None

Questions from Committee:

None

Closing Statement:

09:22:43 Sen. Steve Fitzpatrick (R), SD 10, closed the hearing on SB 136.

09:23:42 Recessed

10:01:31 Reconvened

**EXECUTIVE ACTION ON SB 92 - Eliminate jail penalties for driving while
suspended/revoked**

10:42:13 **Motion:** Sen. Daniel Emrich moved that **SB 92 TO TABLE.**

10:42:13 **Vote:** Motion carried 9 - 2 by roll call vote with Sen. Kelker, Sen. Olsen, voting no.

**EXECUTIVE ACTION ON SB 13 - Revise DUI laws related to admissible tests for presence
of drugs**

11:13:54 **Motion:** Sen. Barry Usher moved that **SB 13 DO PASS.**

11:17:03 **Motion:** Sen. Keith Regier moved that **SB 13 BE AMENDED.**

11:17:03 **Vote:** Motion carried unanimously by voice vote.

11:18:17 **Motion:** Sen. Chris Friedel moved that **SB 13 BE AMENDED.**

11:18:17 **Vote:** Motion carried unanimously by voice vote.

11:21:55 **Motion:** Sen. Barry Usher moved that **SB 13 DO PASS AS AMENDED.**

11:21:55 **Vote:** Motion carried unanimously by voice vote.

EXECUTIVE ACTION ON SB 95 - Generally revise theft laws

- 11:26:12 **Motion:** Sen. Barry Usher moved that **SB 95 DO PASS.**
- 11:26:54 **Motion:** Sen. Barry Usher moved that **SB 95 BE AMENDED.**
- 11:26:54 **Vote:** Motion carried unanimously by voice vote.
- 11:27:53 **Motion:** Sen. Andrea Olsen moved that **SB 95 BE AMENDED.**
- 11:27:53 **Vote:** Motion failed 7 - 4 by voice vote with Sen. Gross, Sen. Kelker, Sen. Olsen, Sen. Webber, voting yes.
Sen. Gross, By Proxy
- 11:29:40 **Motion:** Sen. Barry Usher moved that **SB 95 DO PASS AS AMENDED.**
- 11:29:40 **Vote:** Motion carried 8 - 3 by voice vote with Sen. Gross, Sen. Olsen, Sen. Webber, voting no.
Sen. Gross, By Proxy

EXECUTIVE ACTION ON SB 96 - Create separate definition for persistent felony offender under supervision

- 11:31:04 **Motion:** Sen. Barry Usher moved that **SB 96 DO PASS.**
- 11:31:04 **Vote:** Motion carried 9 - 2 by roll call vote with Sen. Gross, Sen. Olsen, voting no.
Sen. Gross, By Proxy

EXECUTIVE ACTION ON SB 136 - Revise injunction laws

- 12:08:17 **Motion:** Sen. Barry Usher moved that **SB 136 DO PASS.**
- 12:08:17 **Vote:** Motion carried unanimously by voice vote.

ADJOURNMENT

Adjournment: 10:30:44

Grace Gibney, Secretary

Additional Documents: [EXHIBIT\(230112JUSaad\)](#)



2023 Session

Additional Documents

May include the following:

- Business Report
- Roll Call -Attendance
- Standing Committee Reports
- Tabled Bills
- Fiscal Reports [if any]
- Roll Call Votes
- Proxy's
- Visitors sign in sheet.
- Informational Item's
- Witness Statements
- Zoom/Internet Testimony Information
- Any other type of documents such as:
@ Petitions, {if any} Emails, all documents given to
Committee Secretary after meeting. The original
exhibit/items are on file at the Montana Historical
Society and may be viewed there.

BUSINESS REPORT
MONTANA SENATE
REGULAR
(S) Judiciary

Date: 01/12/2023

Time: 9:00 AM

Place: Capitol

Room: 303

BILLS and RESOLUTIONS HEARD:

SB 134 Revise injunction laws - Sen. Steve Fitzpatrick

SB 135 Revise injunction laws - Sen. Steve Fitzpatrick

SB 136 Revise injunction laws - Sen. Steve Fitzpatrick

EXECUTIVE ACTION TAKEN:

SB 13 Do Pass as Amended

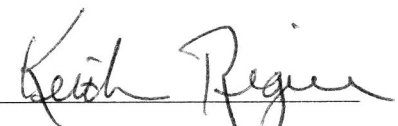
SB 136 Do Pass

SB 92 To Table

SB 95 Do Pass as Amended

SB 96 Do Pass

Comments:

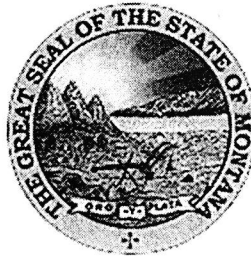

Sen. Keith Regier-R, Chair

Senate
Roll Call
(S) Judiciary

DATE: 01/12/2023

TIME: 9:00 AM

<u>NAME</u>	<u>PRESENT</u>	<u>ABSENT/EXCUSED</u>
Brown, Bob	X	
Emrich, Daniel	X	
Friedel, Chris	X	
Gross, Jen		X
Hinebauch, Steve	X	
Kelker, Kathy	X	
Manzella, Theresa	X	
Olsen, Andrea	X	
Regier, Keith	X	
Usher, Barry	X	
Webber, Susan	X	



Senate Standing Committee Report

January 12, 2023

page 1 of 1

To the President,

We, your committee on (S) **Judiciary** recommend that **Senate Bill 136** (first reading copy – white) **Do Pass**.

Signed: _____

Sen. Keith Regier-R, Chair

-End-

Committee Vote:

Yes 11, No 0



Senate Standing Committee Report

January 12, 2023

page 1 of 1

To the President,

We, your committee on (S) **Judiciary** report that **Senate Bill 96** (first reading copy – white) **Do Pass.**

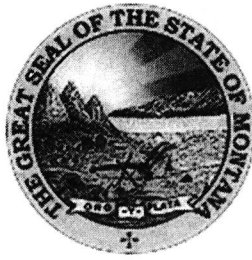
Signed: _____

Sen. Keith Regier-R, Chair

-End-

Committee Vote:

Yes 9, No 2



Senate Standing Committee Report

January 12, 2023

page 1 of 1

To the President,

We, your committee on (S) **Judiciary** report that **Senate Bill 13** (first reading copy – white) **Do Pass as Amended**. The referenced amendment is SB0013.001.002.

Signed: _____

Sen. Keith Regier-R, Chair

-End-

Committee Vote:

Yes 11, No 0

Amendment - 1st Reading-white - (S) - Judiciary

68th Legislature

Drafter: Julianne Burkhardt, 406-444-4025

SB0013.001.003

SENATE BILL NO. 13

INTRODUCED BY K. REGIER

BY REQUEST OF THE LAW AND JUSTICE INTERIM COMMITTEE

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING ADDITIONAL TYPES OF BODILY FLUIDS TO TEST FOR THE PRESENCE OF DRUGS IN DRIVING WHILE UNDER THE INFLUENCE CASES; AMENDING SECTIONS 23-2-535, 61-8-1010, 61-8-1016, 61-8-1018, 61-8-1019, 61-8-1032, AND 67-1-211, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 23-2-535, MCA, is amended to read:

"23-2-535. Alcohol concentration standards -- evidence admissible -- administration of tests.

(1) The inferences contained in 61-8-1002 apply to any criminal action or proceeding arising out of acts alleged to have been committed in violation of 23-2-523(2).

(2) Evidence of any measured amount or detected presence of alcohol or drugs in a person at the time of the act alleged, as shown by analysis of the person's blood, breath, oral fluid, or urine, and any other competent evidence bearing on the question of whether the person was under the influence of alcohol, drugs, or a combination of the two at the time of the act alleged is admissible in any criminal action or proceeding arising out of acts alleged to have been committed in violation of 23-2-523(2).

(3) If a person charged with violation of 23-2-523(2) refuses to submit to a test of the person's blood, breath, or urine for the purpose of determining any measured amount or detected presence of alcohol, none will be given, but proof of refusal is admissible in any criminal action or proceeding arising out of acts alleged to have been committed in violation of 23-2-523(2).

(4) The provisions relating to administration of tests provided in 61-8-1019 and the definition of alcohol concentration provided in 61-8-1001 apply to any testing done to a person charged with violation of 23-2-523(2).

(5) As used in 23-2-523(2), the term "under the influence" has the meaning provided in 61-8-

Amendment - 1st Reading-white - (S) - Judiciary

68th Legislature

Drafter: Julianne Burkhardt, 406-444-4025

SB0013.001.003

1 1001."

2

3 **Section 2.** Section 61-8-1010, MCA, is amended to read:

4 **"61-8-1010. Driving under influence -- ignition interlock device -- 24/7 sobriety and drug**
5 **monitoring program.** (1) For a person convicted of a first offense of driving under the influence, including 61-
6 8-1002, an offense that meets the definition of aggravated driving under the influence in 61-8-1001, or a similar
7 offense under the laws of another state, in addition to the punishments listed in 61-8-1007, the court may,
8 regardless of disposition and if a probationary license is recommended by the court, require the person to
9 comply with the conditions listed in subsection (2)(a) or (2)(b).

10 (2) On a second or subsequent conviction for a violation of driving under the influence, including
11 61-8-1002, an offense that meets the definition of aggravated driving under the influence in 61-8-1001, or a
12 similar offense under the laws of another state, or a second or subsequent conviction under 61-5-212 when the
13 reason for the suspension or revocation was that the person was convicted of a violation of driving under the
14 influence, including 61-8-1002, an offense that meets the definition of aggravated driving under the influence in
15 61-8-1001, or a similar offense under previous laws of this state or the laws of another state, or the suspension
16 was under 61-8-1016 or a similar law of another state for refusal to take a test for alcohol or drugs requested by
17 a peace officer who believed that the person might be driving under the influence, in addition to the
18 punishments listed in 61-8-1002 and 61-8-1007, the court shall ~~require the person:~~

19 (a) require the person to participate in the 24/7 sobriety and drug monitoring program provided for
20 in 44-4-1203 or require the person to participate in a court-approved alcohol or drug detection testing program
21 and to pay the fees associated with the program;

22 (b) if recommending that a probationary license be issued to the person, restrict the person to
23 driving only a motor vehicle equipped with a functioning ignition interlock device during the probationary period
24 and require the person to pay the reasonable cost of leasing, installing, and maintaining the device; or

25 (c) order that each motor vehicle owned by the person at the time of the offense be seized and
26 subjected to the forfeiture procedure provided under 61-8-1033. A vehicle used by a person as a common
27 carrier in the transaction of business as a common carrier is not subject to forfeiture unless it appears that the
28 owner or other person in charge of the vehicle consented to or was privy to the violation. A vehicle may not be

Amendment - 1st Reading-white - (S) - Judiciary

68th Legislature

Drafter: Julianne Burkhardt, 406-444-4025

SB0013.001.003

1 forfeited under this section for any act or omission established by the owner to have been committed or omitted
2 by a person other than the owner while the vehicle was unlawfully in the possession of a person other than the
3 owner in violation of the criminal laws of this state or the United States. Forfeiture of a vehicle encumbered by a
4 security interest is subject to the secured person's interest if the person did not know and could not have
5 reasonably known of the unlawful possession, use, or other act on which the forfeiture is sought.

6 (3) All court-approved alcohol or drug detection testing programs allowed under this section are
7 required to use the state's data management system pursuant to 44-4-1203."
8

9 **Section 3.** Section 61-8-1016, MCA, is amended to read:

10 **"61-8-1016. Implied consent -- blood or breath tests for alcohol, blood or oral fluid for drugs, or**
11 **testing for both -- alcohol and drugs using recognized methods for each -- refusal to submit to test --**
12 **administrative license suspension.** (1) (a) A person who operates or is in actual physical control of a vehicle
13 or commercial motor vehicle upon the ways of this state open to the public is considered to have given consent
14 to a test or tests of the person's blood or breath for the purpose of determining any measured amount or
15 detected presence of alcohol or blood or oral fluid for the purpose of determining any measured amount or
16 detected presence of drugs in the person's body.

17 (b) The tests in subsection (1)(a) include but are not limited to a preliminary alcohol screening test
18 of the person's breath for the purpose of estimating the person's alcohol concentration.

19 (c) A preliminary alcohol screening test may not be conducted or requested under this section
20 unless both the peace officer and the instrument used to conduct the test have been certified by the department
21 pursuant to rules adopted under the authority of 61-8-1019(5).

22 (d) The person's obligation to submit to a test in subsection (1)(a) is not satisfied by the person
23 submitting to a preliminary alcohol screening test pursuant to this section.

24 (2) (a) The test or tests must be administered at the direction of a peace officer when:

25 (i) the peace officer has particularized suspicion to believe that the person has been driving or has
26 been in actual physical control of a vehicle upon ways of this state open to the public while under the influence
27 of alcohol, drugs, or a combination of the two and the person has been detained for a violation of driving under
28 the influence as provided in 61-8-1002 or an offense that meets the definition of aggravated driving under the

Amendment - 1st Reading-white - (S) - Judiciary

68th Legislature

Drafter: Julianne Burkhardt, 406-444-4025

SB0013.001.003

1 under the influence. The inference is rebuttable.

2 (3) The provisions of this part do not limit the introduction of any other competent evidence bearing
3 on the question of whether the person was under the influence of alcohol, drugs, or a combination of alcohol
4 and drugs."

5

6 **Section 5.** Section 61-8-1019, MCA, is amended to read:

7 **"61-8-1019. Administration of tests.** (1) Only a licensed physician, registered nurse, or other
8 qualified person acting under the supervision and direction of a physician or registered nurse may, at the
9 request of a peace officer, withdraw blood for the purpose of determining any measured amount or detected
10 presence of alcohol, drugs, or any combination of alcohol and drugs in the person. This limitation does not
11 apply to the sampling of breath or oral fluid.

12 (2) In addition to any test administered at the direction of a peace officer, a person may request
13 that an independent blood sample be drawn by a physician or registered nurse for the purpose of determining
14 any measured amount or detected presence of alcohol, drugs, or any combination of alcohol and drugs in the
15 person. The peace officer may not unreasonably impede the person's right to obtain an independent blood test.
16 The peace officer may but has no duty to transport the person to a medical facility or otherwise assist the
17 person in obtaining the test. The cost of an independent blood test is the sole responsibility of the person
18 requesting the test. The failure or inability to obtain an independent test by a person does not preclude the
19 admissibility in evidence of any test given at the direction of a peace officer.

20 (3) Upon the request of the person tested, full information concerning any test given at the
21 direction of the peace officer must be made available to the person or the person's attorney.

22 (4) A physician, registered nurse, or other qualified person acting under the supervision and
23 direction of a physician or registered nurse does not incur any civil or criminal liability as a result of the proper
24 administering of a blood test when requested in writing by a peace officer to administer a test.

25 (5) The department in cooperation with any appropriate agency shall adopt uniform rules for the
26 giving of tests and may require certification of training to administer the tests as considered necessary.

27 (6) If a peace officer has probable cause to believe that a person has violated 61-8-1002, meets
28 the definition of aggravated driving under the influence as defined in 61-8-1001, or has violated 61-8-805 and a

Amendment - 1st Reading-white - (S) - Judiciary

68th Legislature

Drafter: Julianne Burkhardt, 406-444-4025

SB0013.001.003

1 sample of blood, breath, oral fluid, urine, or other bodily substance is taken from that person for any reason, a
2 portion of that sample sufficient for analysis must be provided to a peace officer if requested for law
3 enforcement purposes and upon issuance of a subpoena as provided in 46-4-301."

4
5 **Section 6.** Section 61-8-1032, MCA, is amended to read:

6 **"61-8-1032. Mandatory suspension of license following certain implied consent action.** (1) The
7 department shall suspend an individual's driver license if the department receives a report for an implied
8 consent violation from law enforcement or another reporting jurisdiction that, pursuant to 61-8-1016, an
9 individual has refused a test or tests of the person's blood, breath, oral fluid, urine, or other bodily substance for
10 determining any measured amount or detected presence of alcohol or drugs in the person's body.

11 (2) (a) Except as permitted by law, a person whose license or privilege to drive a motor vehicle on
12 the public highways has been suspended may not have the license or privilege renewed or restored until the
13 revocation or suspension duration has been completed.

14 (b) The department shall apply the appropriate sanction to the driver based on the reported
15 conviction and prior offenses.

16 (c) The driver shall pay all reinstatement and administrative fees owed to the department before a
17 driver's license or privilege to drive is restored.

18 (d) The duration of the suspension commences from the date of violation.

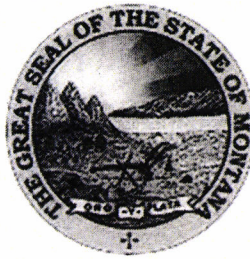
19 (e) If a person refuses tests for the same incident, the department may not consider each a
20 separate refusal for purposes of suspension.

21 (f) The department may not issue a probationary license during the suspension issued under this
22 part.

23 (3) (a) A person who has an implied consent violation shall pay the department an administrative
24 fee of \$300, which must be deposited in the state special revenue account established pursuant to subsection
25 (3)(b).

26 (b) There is a blood-draw search warrant processing account in the state special revenue fund
27 established pursuant to 17-2-102(1)(b). Money provided to the department of justice pursuant to this subsection

28 (3) must be deposited in the account and may be used only for providing forensic analysis of a driver's blood or



Senate Standing Committee Report

January 12, 2023

page 1 of 1

To the President,

We, your committee on (S) **Judiciary** report that **Senate Bill 95** (first reading copy – white) **Do Pass as Amended**. The referenced amendment is SB0095.001.001.

Signed: _____

A handwritten signature in cursive script, reading "Keith Regier", written over a horizontal line.

Sen. Keith Regier-R, Chair

-End-

Committee Vote:

Yes 8, No 3

Amendment - 1st Reading-white - Requested by: Barry Usher - (S) Judiciary

68th Legislature 2023

Drafter: Julianne Burkhardt, 406-444-4025

SB0095.001.001

SENATE BILL NO. 95

INTRODUCED BY B. USHER

BY REQUEST OF THE CRIMINAL JUSTICE OVERSIGHT COUNCIL

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING SENTENCING LAWS FOR THEFT, FAILURE TO RETURN RENTED OR LEASED PERSONAL PROPERTY, ISSUING A BAD CHECK, DECEPTIVE PRACTICES, AND FORGERY; AND AMENDING SECTIONS 45-2-101, 45-6-301, 45-6-309, 45-6-316, 45-6-317, AND 45-6-325, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 45-2-101, MCA, is amended to read:

"45-2-101. General definitions. Unless otherwise specified in the statute, all words must be taken in the objective standard rather than in the subjective, and unless a different meaning plainly is required, the following definitions apply in this title:

(1) "Acts" has its usual and ordinary meaning and includes any bodily movement, any form of communication, and when relevant, a failure or omission to take action.

(2) "Administrative proceeding" means a proceeding the outcome of which is required to be based on a record or documentation prescribed by law or in which a law or a regulation is particularized in its application to an individual.

(3) "Another" means a person or persons other than the offender.

(4) (a) "Benefit" means gain or advantage or anything regarded by the beneficiary as gain or advantage, including benefit to another person or entity in whose welfare the beneficiary is interested.

(b) Benefit does not include an advantage promised generally to a group or class of voters as a consequence of public measures that a candidate engages to support or oppose.

(5) "Bodily injury" means physical pain, illness, or an impairment of physical condition and includes mental illness or impairment.

(6) "Child" or "children" means any individual or individuals under 18 years of age, unless a

Amendment - 1st Reading-white - Requested by: Barry Usher - (S) Judiciary

68th Legislature 2023

Drafter: Julianne Burkhardt, 406-444-4025

SB0095.001.001

(ii) The value of any other instrument that creates, releases, discharges, or otherwise affects any valuable legal right, privilege, or obligation is considered the amount of economic loss that the owner of the instrument might reasonably suffer by virtue of the loss of the instrument.

(iii) The value of electronic impulses, electronically produced data or information, computer software or programs, or any other tangible or intangible item relating to a computer, computer system, or computer network is considered to be the amount of economic loss that the owner of the item might reasonably suffer by virtue of the loss of the item. The determination of the amount of economic loss includes but is not limited to consideration of the value of the owner's right to exclusive use or disposition of the item.

(b) When it cannot be determined if the value of the property is more or less than \$1,500 by the standards set forth in subsection (77)(a), its value is considered to be an amount less than \$1,500.

(c) Amounts involved in thefts committed pursuant to a common scheme or the same transaction, whether from the same person or several persons, may be aggregated in determining the value of the property.

(78) "Vehicle" means a device for transportation by land, water, or air or by mobile equipment, with provision for transport of an operator.

(79) "Weapon" means an instrument, article, or substance that, regardless of its primary function, is readily capable of being used to produce death or serious bodily injury.

(80) "Witness" means a person whose testimony is desired in an official proceeding, in any investigation by a grand jury, or in a criminal action, prosecution, or proceeding."

Section 2. Section 45-6-301, MCA, is amended to read:

"45-6-301. Theft. (1) A person commits the offense of theft when the person purposely or knowingly obtains or exerts unauthorized control over property of the owner and:

(a) has the purpose of depriving the owner of the property;

(b) purposely or knowingly uses, conceals, or abandons the property in a manner that deprives the owner of the property; or

(c) uses, conceals, or abandons the property knowing that the use, concealment, or abandonment probably will deprive the owner of the property.

(2) A person commits the offense of theft when the person purposely or knowingly obtains by

Amendment - 1st Reading-white - Requested by: Barry Usher - (S) Judiciary

68th Legislature 2023

Drafter: Julianne Burkhardt, 406-444-4025

SB0095.001.001

1 threat or deception control over property of the owner and:

2 (a) has the purpose of depriving the owner of the property;

3 (b) purposely or knowingly uses, conceals, or abandons the property in a manner that deprives the
4 owner of the property; or

5 (c) uses, conceals, or abandons the property knowing that the use, concealment, or abandonment
6 probably will deprive the owner of the property.

7 (3) A person commits the offense of theft when the person purposely or knowingly obtains control
8 over stolen property knowing the property to have been stolen by another and:

9 (a) has the purpose of depriving the owner of the property;

10 (b) purposely or knowingly uses, conceals, or abandons the property in a manner that deprives the
11 owner of the property; or

12 (c) uses, conceals, or abandons the property knowing that the use, concealment, or abandonment
13 probably will deprive the owner of the property.

14 (4) A person commits the offense of theft when the person purposely or knowingly obtains or
15 exerts unauthorized control over any part of any public assistance provided under Title 52 or 53 by a state or
16 county agency, regardless of the original source of assistance, by means of:

17 (a) a knowingly false statement, representation, or impersonation; or

18 (b) a fraudulent scheme or device.

19 (5) A person commits the offense of theft when the person purposely or knowingly obtains or
20 exerts or helps another obtain or exert unauthorized control over any part of any benefits provided under Title
21 39, chapter 71, by means of:

22 (a) a knowingly false statement, representation, or impersonation; or

23 (b) deception or other fraudulent action.

24 ~~(6) A person commits the offense of theft when the person:~~

25 ~~(a) purposely or knowingly commits insurance fraud as provided in 33-1-1202 or 33-1-1302; or~~

26 ~~(b) purposely or knowingly diverts or misappropriates insurance premiums as provided in 33-17-~~

27 ~~1102.~~

28 ~~(7)(6)~~ A person commits the offense of theft of property by embezzlement when, with the purpose to

Amendment - 1st Reading-white - Requested by: Barry Usher - (S) Judiciary

68th Legislature 2023

Drafter: Julianne Burkhardt, 406-444-4025

SB0095.001.001

1 deprive the owner of the property, the person:

2 (a) purposely or knowingly obtains or exerts unauthorized control over property of the person's
3 employer or over property entrusted to the person; or

4 (b) purposely or knowingly obtains by deception control over property of the person's employer or
5 over property entrusted to the person.

6 ~~(7)~~ (8)(7) —(a) Except as provided in subsections (7) subsection ~~(8)(b)(7)(b)~~ and (7)(d), a person
7 convicted of a first offense of the offense of theft of property not exceeding \$1,500 in value shall be fined an
8 amount not to exceed ~~\$500~~ \$1,500 or be imprisoned in the county jail for a term not to exceed 6 months, or
9 both. A person convicted of a second offense shall be fined ~~an amount not to exceed \$500~~ \$1,500 or be
10 imprisoned in the county jail for a term not to exceed 6 months, or both. A person convicted of a third or
11 subsequent offense shall be fined ~~an amount not to exceed \$500~~ \$1,500 and be imprisoned in the county jail
12 for a term of not less than ~~5~~ 30 days or more than ~~6 months~~ 1 year.

13 (b) (i) Except as provided in subsection ~~(8)(7)(e)(7)(c)~~, a person convicted of the offense of theft of
14 property that exceeds \$1,500 in value and ~~does not exceed \$5,000 in value shall be fined an amount not to~~
15 ~~exceed \$1,500 or be imprisoned in the state prison for a term not to exceed 3 years, or both. A person~~
16 ~~convicted of a second offense shall be fined an amount not to exceed \$1,500 or be imprisoned in the state~~
17 ~~prison for a term not to exceed 5 years, or both. A person convicted of a third or subsequent offense shall be~~
18 ~~imprisoned in the state prison for a term of not less than 2 years or more than 5 years and may be fined an~~
19 ~~amount not to exceed \$5,000.~~

20 (ii) ~~A person convicted of the theft of property exceeding \$5,000 in value or as part of a common~~
21 ~~scheme as defined in 45-2-101, or the theft of any amount of anhydrous ammonia for the purpose of~~
22 ~~manufacturing dangerous drugs, shall be fined an amount not to exceed \$10,000~~ \$50,000 or be imprisoned in a
23 state prison for a term not to exceed 10 years, or both.

24 ~~(iii)~~ (ii) —A person convicted of the theft of any commonly domesticated hoofed animal shall be fined
25 an amount of not less than \$5,000 or more than \$50,000 or be imprisoned in a state prison for a term not to
26 exceed 10 years, or both. If a prison term is deferred, the court shall order the offender to perform 416 hours of
27 community service during a 1-year period, in the offender's county of residence. In addition to the fine and
28 imprisonment, the offender's property is subject to criminal forfeiture pursuant to 45-6-328 and 45-6-329.

Amendment - 1st Reading-white - Requested by: Barry Usher - (S) Judiciary

68th Legislature 2023

Drafter: Julianne Burkhardt, 406-444-4025

SB0095.001.001

(c) A person convicted of the offense of theft of property exceeding \$10,000 in value by embezzlement shall be imprisoned in a state prison for a term of not less than 1 year or more than 10 years and may be fined an amount not to exceed \$50,000. The court may, in its discretion, place the person on probation with the requirement that restitution be made under terms set by the court. If the terms are not met, the required prison term may be ordered.

~~(d) A person convicted of a first offense for the offense of theft of property not exceeding \$1,500 in value and who utilized an emergency exit in furtherance of that offense shall be fined an amount not to exceed \$500 or be imprisoned in the county jail for a term not to exceed 6 months, or both. On a second conviction, the offender shall be fined an amount not to exceed \$1,000 or be imprisoned in the county jail for a term not to exceed 1 year, or both. On a third conviction, the offender shall be fined an amount not to exceed \$5,000 and be imprisoned in the county jail for a term of not less than 5 days or more than 1 year.~~

~~(8)(9)(8)~~ —Amounts involved in thefts committed pursuant to a common scheme or the same transaction, whether from the same person or several persons, may be aggregated in determining the value of the property.

~~(9) A person convicted of the offense of theft of property not exceeding \$100 in value is presumed to qualify for a deferred imposition of sentence as long as the person has not been convicted of a misdemeanor or felony offense in the past 5 years."~~

Section 3. Section 45-6-309, MCA, is amended to read:

"45-6-309. Failure to return rented or leased personal property. (1) A person commits the offense of failure to return rented or leased personal property if, without notice to and permission of the lessor, the person purposely and knowingly fails to return the property within 48 hours after the time provided for return in the rental agreement, provided that clear written notice, in bold print, of the date and time when return of the property is required and of the penalty prescribed in this section is stated in the rental or lease agreement.

(2) Presentation to the lessor by the lessee of identification that is false for the purpose of obtaining a rental or lease agreement constitutes prima facie evidence of commission of the offense.

(3) After the rental or lease period specified in the rental or lease agreement has expired, failure to return rented or leased personal property within 72 hours of written demand by the lessor, sent by certified mail

SENATE COMMITTEE ON (S) JUDICIARY
January 12, 2023
VOTE TABULATION - SB 13

Sen. Regier made a Motion that SB0013.001.001 Be Amended
YEAS – 11 NAYS - 0

Y	Brown, Bob
Y	Emrich, Daniel
Y	Friedel, Chris
Y	Gross, Jen; by proxy
Y	Hinebauch, Steve
Y	Kelker, Kathy
Y	Manzella, Theresa
Y	Olsen, Andrea
Y	Regier, Keith
Y	Usher, Barry
Y	Webber, Susan

SENATE COMMITTEE ON (S) JUDICIARY
January 12, 2023
VOTE TABULATION - SB 13

Sen. Regier made a Motion that SB0013.001.001 Be Amended
YEAS – 11 NAYS - 0

Y	Brown, Bob
Y	Emrich, Daniel
Y	Friedel, Chris
Y	Gross, Jen; by proxy
Y	Hinebauch, Steve
Y	Kelker, Kathy
Y	Manzella, Theresa
Y	Olsen, Andrea
Y	Regier, Keith
Y	Usher, Barry
Y	Webber, Susan

SENATE COMMITTEE ON (S) JUDICIARY
January 12, 2023
VOTE TABULATION - SB 13

Sen. Friedel made a Motion that SB0013.001.002 Be Amended
YEAS – 11 NAYS - 0

Y	Brown, Bob
Y	Emrich, Daniel
Y	Friedel, Chris
Y	Gross, Jen; by proxy
Y	Hinebauch, Steve
Y	Kelker, Kathy
Y	Manzella, Theresa
Y	Olsen, Andrea
Y	Regier, Keith
Y	Usher, Barry
Y	Webber, Susan

SENATE COMMITTEE ON (S) JUDICIARY
January 12, 2023
VOTE TABULATION - SB 13

Sen. Usher made a Motion that SB 13 Do Pass as Amended
YEAS – 11 NAYS - 0

Y	Brown, Bob
Y	Emrich, Daniel
Y	Friedel, Chris
Y	Gross, Jen; by proxy
Y	Hinebauch, Steve
Y	Kelker, Kathy
Y	Manzella, Theresa
Y	Olsen, Andrea
Y	Regier, Keith
Y	Usher, Barry
Y	Webber, Susan

SENATE COMMITTEE ON (S) JUDICIARY
January 12, 2023
VOTE TABULATION - SB 92

Sen. Emrich made a Motion that SB 92 To Table
YEAS – 9 NAYS - 2

Y	Brown, Bob
Y	Emrich, Daniel
Y	Friedel, Chris
Y	Gross, Jen; by proxy
Y	Hinebauch, Steve
N	Kelker, Kathy
Y	Manzella, Theresa
N	Olsen, Andrea
Y	Regier, Keith
Y	Usher, Barry
Y	Webber, Susan

SENATE COMMITTEE ON (S) JUDICIARY
January 12, 2023
VOTE TABULATION - SB 95

Sen. Usher made a Motion that SB0095.001.001 Be Amended
YEAS – 11 NAYS - 0

Y	Brown, Bob
Y	Emrich, Daniel
Y	Friedel, Chris
Y	Gross, Jen; by proxy
Y	Hinebauch, Steve
Y	Kelker, Kathy
Y	Manzella, Theresa
Y	Olsen, Andrea
Y	Regier, Keith
Y	Usher, Barry
Y	Webber, Susan

SENATE COMMITTEE ON (S) JUDICIARY
January 12, 2023
VOTE TABULATION - SB 95

Sen. Olsen made a Motion that SB0095.001.002 Be Amended
YEAS – 4 NAYS - 7

N	Brown, Bob
N	Emrich, Daniel
N	Friedel, Chris
Y	Gross, Jen; by proxy
N	Hinebauch, Steve
Y	Kelker, Kathy
N	Manzella, Theresa
Y	Olsen, Andrea
N	Regier, Keith
N	Usher, Barry
Y	Webber, Susan

SENATE COMMITTEE ON (S) JUDICIARY
January 12, 2023
VOTE TABULATION - SB 95

Sen. Usher made a Motion that SB0095.001.001 Do Pass as Amended
YEAS – 8 NAYS - 3

Y	Brown, Bob
Y	Emrich, Daniel
Y	Friedel, Chris
N	Gross, Jen; by proxy
Y	Hinebauch, Steve
Y	Kelker, Kathy
Y	Manzella, Theresa
N	Olsen, Andrea
Y	Regier, Keith
Y	Usher, Barry
N	Webber, Susan

SENATE COMMITTEE ON (S) JUDICIARY
January 12, 2023
VOTE TABULATION - SB 96

Sen. Usher made a Motion that SB 96 Do Pass
YEAS – 9 NAYS - 2

Y	Brown, Bob
Y	Emrich, Daniel
Y	Friedel, Chris
N	Gross, Jen; by proxy
Y	Hinebauch, Steve
Y	Kelker, Kathy
Y	Manzella, Theresa
N	Olsen, Andrea
Y	Regier, Keith
Y	Usher, Barry
Y	Webber, Susan

SENATE COMMITTEE ON (S) JUDICIARY
January 12, 2023
VOTE TABULATION - SB 136

Sen. Usher made a Motion that SB 136 Do Pass
YEAS – 11 NAYS - 0

Y	Brown, Bob
Y	Emrich, Daniel
Y	Friedel, Chris
Y	Gross, Jen; by proxy
Y	Hinebauch, Steve
Y	Kelker, Kathy
Y	Manzella, Theresa
Y	Olsen, Andrea
Y	Regier, Keith
Y	Usher, Barry
Y	Webber, Susan

SENATE PROXY

I, Senator Gross, hereby authorize Senator
Judiciary to vote my proxy before the Senate
meeting held on _____, 2023.

Senator Signature

1-12-2023
Date

Said authorization is as follows: (mark only one)

- ☐ All votes, including amendments.
- ☐ All votes as directed below on the listed bills, and all other votes.
- ☐ Votes only as directed below.

Bill No./Amendment No.	Aye	No
SB 92 TO TABLE	✓	
SB 13 SB0013.001.001	✓	
SB0013.001.002	✓	
DO PASS	✓	
SB 95 SB0095.001.001	✓	
SB0095.001.002	✓	
AMEND ONCE		✓
SB 96		✓
SB 136	✓	

9/2

|||| ~~||||~~
|||| ~~||||~~
|| ~~||||~~

Details:

Bill: SB-13: Revise DUI laws related to admissible tests for presence of drugs 2023-01-05 09:00 AM - (S)

Judiciary

Position: Informational Witness

Representing an Entity/Another Person: Yes

Organization: Office of State Public Defender

Name: Brett Schandelson

Email:

Phone:

City, State: Missoula, MT

Written Statement: Not Provided

Files:

Testify via Zoom: Yes

Zoom Method: Computer

Details:

Bill: SB-96: Create separate definition for persistent felony offender under supervision 2023-01-10 09:00

AM - (S) Judiciary

Position: Opponent

Representing an Entity/Another Person: Yes

Organization: Montana Innocence Project

Name: Amy Sings In The Timber

Em

Phone: r

City, State: Missoula, MT

Written Statement: Not Provided

Files:

Testify via Zoom: Yes

Zoom Method: Phone

Details:

Bill: SB-96: Create separate definition for persistent felony offender under supervision 2023-01-10 09:00

AM - (S) Judiciary

Position: Opponent

Representing an Entity/Another Person: Yes

Organization: Welcome Back

Name: Clemente Arciga

Email: _____

Phone: (_____) _____

City, State: Gold Creek

Written Statement: Not Provided

Files:

Testify via Zoom: Yes

Zoom Method: Phone

Details:

Bill: SB-96: Create separate definition for persistent felony offender under supervision 2023-01-10 09:00

AM - (S) Judiciary

Position: Opponent

Representing an Entity/Another Person: Yes

Organization: Welcome Back

Name: Clemente Arciga

Email: _____

Phone: \

City, State: Gold Creek

Written Statement: Not Provided

Files:

Testify via Zoom: Yes

Zoom Method: Phone

Details:

Bill: SB-96: Create separate definition for persistent felony offender under supervision 2023-01-10 09:00

AM - (S) Judiciary

Position: Opponent

Representing an Entity/Another Person: No

Organization: N/A

Name: Bart L Holt

Email:

Phone: (

City, State: Missoula, MT

Written Statement: Not Provided

Files: Public Comment SB96_ PFO Designation.pdf Testify via Zoom: No Zoom Method: N/A

My name is Bart Holt, and I oppose SB 96, AN ACT CREATING A SEPARATE DEFINITION FOR A PERSISTENT FELONY OFFENDER UNDER SUPERVISION.

In actuality, I oppose the Persistent Felony Offender law, because it does not make society safer, in my opinion.

At face value, this law is intended to protect society from people who continue to commit crimes that threaten public safety. However, it is being used by prosecutors as leverage in plea bargaining negotiations, in order to coerce defendants into admitting to crimes, so that cases can be closed. In other words, defendants feel compelled to admit to a crime in order to avoid PFO designation, and an increased sentence.

A person who continues to commit crimes is a sign that the system has failed them. What can be done?

When an individual's background is looked at, there is usually no surprise that they resorted to a life of crime. This can be demonstrated with an ACE score(Adverse Childhood Experiences). These scores predict the tendency for a person to engage in criminal activity, based on forms of trauma previously experienced.

The current criminal justice system emphasizes punishment with long prison sentences, in order to act as a deterrent to future crimes. Unfortunately, this system has failed.

Norway had a similar system in the United States as late as the 1990's. The recidivism rate was approximately 70 percent, similar to the rate of recidivism in the United States. They overhauled their system, emphasizing emotional/moral rehabilitation, vocational training/education, and development of support networks, in order to convert people into productive citizens of society. The current recidivism rate in Norway is 20 percent, a substantial decrease.

The average sentence in Norway is one year or less, at \$93,000 per year for each inmate. This is significantly higher than the average cost in Montana, which is \$30,000. However, the average sentence in Montana is at least three years, so the cost is equivalent, based on the duration of sentence.

In conclusion, the PFO designation is not the answer to addressing the problem of recidivism by using harsher sentences as a deterrent, as demonstrated in the prison system of Norway.

VISITORS REGISTER

MONTANA SENATE JUDICIARY COMMITTEE

Date: January 12, 2023 Bill No: SB134

Sponsor: Sen. Steve Fitzpatrick
(Insert Short Title)

Please print ~ Please print ~ Please print ~ Please print

NAME	REPRESENTING	Support	Oppose	Informat'l

*Please leave prepared testimony with Committee Secretary. Witness Statement
Forms are available if you prefer to submit written testimony.*

VISITORS REGISTER

MONTANA SENATE JUDICIARY COMMITTEE

Date: January 12, 2023 Bill No: SB135

Sponsor: Sen. Fitzpatrick
(Insert Short Title)

Please print ~ Please print ~ Please print ~ Please print

NAME	REPRESENTING	Support	Oppose	Informat'l

*Please leave prepared testimony with Committee Secretary. Witness Statement
Forms are available if you prefer to submit written testimony.*

MINUTES
MONTANA HOUSE OF REPRESENTATIVES
68th LEGISLATURE - REGULAR SESSION
COMMITTEE ON (H) JUDICIARY

Call to Order: Chair Brandon Ler-R, on March 10, 2023 at 9:00 AM, in 137

ROLL CALL

Members Present: Rep. Amy Regier, Chair (R)
Rep. Laurie Bishop, Vice Chair (D)
Rep. Lee Deming (R)
Rep. Neil Duram (R)
Rep. Jodee Etchart (R)
Rep. Tom France (D)
Rep. Donavon Hawk (D)
Rep. Caleb Hinkle (R)
Rep. Jedediah Hinkle (R)
Rep. SJ Howell (D)
Rep. Greg Kmetz (R)
Rep. Casey Knudsen (R)
Rep. Wayne Rusk (R)
Rep. Lola Sheldon-Galloway (R)
Rep. Laura Smith (D)
Rep. Zooey Zephyr (D)

Members Excused: Rep. Kim Abbott (D)
Rep. Jennifer Carlson (R)
Rep. Brandon Ler (R)
Rep. Braxton Mitchell (R)

Staff Present: Jamie Van Valkenburg, Secretary
Rachel Weiss, Research Analyst

Audio Committees: These minutes are in outline form only. They provide a list of participants and a record of official action taken by the committee. The link to the audio recording of the meeting is available on the Legislative Branch website.

Committee Business Summary:

Hearing & Date Posted:

SB 12 03/02/2023

SB 13 03/02/2023

Executive Action:

HEARING ON SB 12 - Revising laws on public defender representation related to local ordinances

Opening Statement:

09:01:34 Sen. Ryan Lynch (D), SD 76, opened the hearing on SB 12, Revising laws on public defender representation related to local ordinances.

Proponent Testimony:

None

Opponent Testimony:

09:03:23 Thomas Jodoin, Montana League of Cities and Towns

09:05:56 Rep. Jennifer Carlson joined the meeting.

Informational Witness Testimony:

09:07:11 Eldena Bear Don't Walk, Office of the Public Defender

Closing Statement:

09:07:38 Sen. Ryan Lynch (D), SD 76, closed the hearing on SB 12.

HEARING ON SB 13 - Revise DUI laws related to admissible tests for presence of drugs

Opening Statement:

09:08:54 Sen. Keith Regier (R), SD 3, opened the hearing on SB 13, Revise DUI laws related to admissible tests for presence of drugs.

Proponent Testimony:

09:10:45 Jessie Luther, Montana Troopers

09:11:30 Nanatte Gilbertson, Montana County Attorney's Association

09:12:22 Dan Smith, Montana Police Protective Association

Opponent Testimony:

None

Informational Witness Testimony:

09:13:07 Eldena Bear Don't Walk, Office of the Public Defender

Questions from Committee:

09:13:38 Rep. Greg Kmetz

09:13:45 Eldena Bear Don't Walk, OPD

09:14:33 Jessie Luther

Closing Statement:

09:21:13 Sen. Keith Regier (R), SD 3, closed the hearing on SB 13.

09:21:51 **Committee Discussion:** Discussion on Conflict Checking

09:22:08 Rachel Weiss

ADJOURNMENT

Adjournment: 09:24:29

Jamie Van Valkenburg, Secretary

Additional Documents: [EXHIBIT\(230310JUHaad\)](#)



2023 Session

Additional House Documents

- Business Report
- Roll Call -Attendance
- Standing Committee Reports
- Tabled Bills
- Fiscal Reports [if any]
- Roll Call Votes
- Proxies signed in ink
- Visitor's sign-in sheet.
- Informational Item's
- Witness Statements if any,
- Zoom/Internet Testimony Information & index
- Any other type of documents such as:
 - @ Petitions, {if any} Emails, all documents given to Committee Secretary before & after meeting.
- Public Testimony documents may or may not be scanned, they will be on file at the Montana Historical Society.
- Disclaimer: within the online minutes document you will see vacate spaces within the document. The LAWS II system creates these blank areas they are not loss of information.

The original exhibit/items are on file at the Montana Historical Society and may be viewed there.

Montana Historical Society Archives,
225 N. Roberts, Helena, MT 59620-1201
E-Document Specialist Susie Hamilton

BUSINESS REPORT

MONTANA HOUSE

REGULAR

(H) Judiciary

Date: 03/10/2023

Time: 9:00 AM

Place: Capitol

Room: 137

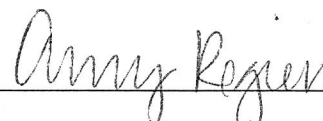
BILLS and RESOLUTIONS HEARD:

SB 12 Revising laws on public defender representation related to local ordinances - Sen. Ryan Lynch

SB 13 Revise DUI laws related to admissible tests for presence of drugs - Sen. Keith Regier

EXECUTIVE ACTION TAKEN:

Comments:

A handwritten signature in cursive script, reading "Amy Regier", is written over a horizontal line.

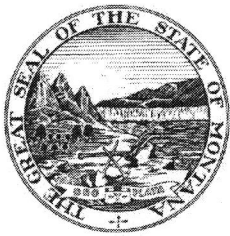
Rep. Amy Regier-R, Chair

House
Roll Call
(H) Judiciary

DATE: 03/10/2023

TIME: 9:00 AM

<u>NAME</u>	<u>PRESENT</u>	<u>ABSENT/EXCUSED</u>
Ler, Brandon		X
Bishop, Laurie	X	
Mitchell, Braxton		X
Sheldon-Galloway, Lola	X	
Smith, Laura	X	
Deming, Lee	X	
Knudsen, Casey	X	
France, Tom	X	
Carlson, Jennifer		X
Howell, SJ	X	
Hinkle, Caleb	X	
Duram, Neil	X	
Hawk, Donavon	X	
Zephyr, Zooey	X	
Kmetz, Greg	X	
Etchart, Jodee	X	
Hinkle, Jedediah	X	
Rusk, Wayne	X	
Abbott, Kim		X
Regier, Amy	X	



The Big Sky Country

MONTANA HOUSE OF REPRESENTATIVES

VISITOR REGISTER JUDICIARY COMMITTEE

DATE 3/10 BILL NO: SB13
SPONSOR(S): Sen. K Regier
SHORT TITLE: _____

Please leave prepared testimony with the clerk.
Witness Statement forms are available if you care to submit written testimony.

PLEASE PRINT PLEASE PRINT PLEASE PRINT PLEASE PRINT

Name	Representing	Support	Oppose	Informt'l
Don Dan Smith	MT Police Assn	X		
Jessie Luther	AUT	X		
Rebecca Schwartz	Self	X		
Brynn Mason	Kathleen Self	X		
Natalie Yeh	Self	X		
Tatum Brisendine	Self	X		
Nanette Gilbertson	MSTOA	✓		
Graen Haddlenham	Self	✓		
London Lewis	Self	✓		
Kitt Haddlenham	Self	✓		
Makynley Dean	Self	X		
Lucia Ghekiere	Self	✓		
Sophia Ochenrider	myself	X		
Kidde Ghekiere	myself	✓		
Ellie Kemeef	myself	✓		
Julia Brisendine	myself	X		
Anrika Mason	my self	X		





03/10/23 JUH ONLINE TESTIMONY LIST							
3/10/2023	JUH	SB	12	Informational Witness	Eldena Bear Dont Walk	Polson, MT	Office of the Public Defender
3/10/2023	JUH	SB	13	Informational Witness	Eldena Bear Dont Walk	Polson, MT	Office of the Public Defender

MINUTES
MONTANA HOUSE OF REPRESENTATIVES
68th LEGISLATURE - REGULAR SESSION
COMMITTEE ON (H) JUDICIARY

Call to Order: Chair Amy Regier-R, on March 16, 2023 at 8:01 AM, in 137

ROLL CALL

Members Present: Rep. Amy Regier, Chair (R)
Rep. Laurie Bishop, Vice Chair (D)
Rep. Jennifer Carlson (R)
Rep. Lee Deming (R)
Rep. Neil Duram (R)
Rep. Jodee Etchart (R)
Rep. Tom France (D)
Rep. Caleb Hinkle (R)
Rep. Jedediah Hinkle (R)
Rep. SJ Howell (D)
Rep. Greg Kmetz (R)
Rep. Wayne Rusk (R)
Rep. Lola Sheldon-Galloway (R)

Members Excused: Rep. Kim Abbott (D)
Rep. Donavon Hawk (D)
Rep. Casey Knudsen (R)
Rep. Brandon Ler (R)
Rep. Braxton Mitchell (R)
Rep. Laura Smith (D)
Rep. Zooey Zephyr (D)

Staff Present: Jamie Van Valkenburg, Secretary
Rachel Weiss, Research Analyst

Audio Committees: These minutes are in outline form only. They provide a list of participants and a record of official action taken by the committee. The link to the audio recording of the meeting is available on the Legislative Branch website.

Committee Business Summary:

Hearing & Date Posted:

SB 148 03/13/2023
SB 149 03/13/2023
SB 265 03/13/2023
SJ 3 03/13/2023

Executive Action:

SB 12 TO TABLE
SB 13
SB 164
SJ 3

HEARING ON SJ 3 - Joint resolution related to the Justice Counts Initiative

Opening Statement:

08:03:14 Sen. Ryan Lynch (D), SD 76, opened the hearing on SJ 3, Joint resolution related to the Justice Counts Initiative.

Proponent Testimony:

08:03:55 Maggie Bornstein, American Civil Liberties Union of Montana

Opponent Testimony:

None

Questions from Committee:

None

Closing Statement:

08:04:49 Sen. Ryan Lynch (D), SD 76, closed the hearing on SJ 3.

HEARING ON SB 148 - Revise laws regarding legal representation of children

Opening Statement:

08:05:57 Sen. Dennis Lenz (R), SD 53, opened the hearing on SB 148, Revise laws regarding legal representation of children.

Proponent Testimony:

08:09:46 Beth Brenneman, Coalition Against Domestic and Sexual Violence

08:10:29 Denise Johnson, Montana Child Protection Alliance

Opponent Testimony:

08:12:47 Bruce Spencer, Montana Judges Association

Informational Witness Testimony:

08:17:57 Nikki Grossberg, Office of the Public Defender

08:18:18 Brett Chandelson, Office of the Public Defender

Questions from Committee:

08:19:15 Rep. Jedediah Hinkle

08:31:32 Denise Johnson

08:35:49 Sen. Dennis Lenz-R

Closing Statement:

08:38:40 Sen. Dennis Lenz (R), SD 53, closed the hearing on SB 148.

08:55:57 Vice Chair Ler has arrived

08:56:03 Rep. Smith has arrived

HEARING ON SB 149 - Establish penalties for false reporting in child protective services cases

Opening Statement:

08:44:14 Sen. Dennis Lenz (R), SD 53, opened the hearing on SB 149, Establish penalties for false reporting in child protective services cases.

Proponent Testimony:

08:46:23 Nikki Grossberg, Office of the Public Defender

08:47:02 Paul Bleach, Self

08:47:24 Denise Johnson, Montana Child Protection Alliance

Questions from Committee:

08:50:46 Rep. SJ Howell

08:57:19 Nikki Grossberg OPD

Opponent Testimony:

None

Closing Statement:

08:57:51 Sen. Dennis Lenz (R), SD 53, closed the hearing on SB 149.

HEARING ON SB 265 - Increase penalty for conviction of criminal activity of human trafficking

Opening Statement:

08:59:49 Sen. Mark Noland (R), SD 10, opened the hearing on SB 265, Increase penalty for conviction of criminal activity of human trafficking.

Proponent Testimony:

09:01:45 Alex Sterhan, Department of Justice

09:02:27 Shelby DeMars, Montana Police Protective Association

Opponent Testimony:

None

Questions from Committee:

09:03:06 Rep. Lee Deming

09:04:08 Alex Sterhan

Closing Statement:

09:04:23 Sen. Mark Noland (R), SD 10, closed the hearing on SB 265.

09:05:52 **Recessed**

09:24:58 Rep. Knudsen has arrived

09:25:09 Rep. Zephyr has arrived

09:26:51 Rep. Smith has arrived

09:30:07 **Reconvened**

EXECUTIVE ACTION ON SB 12 - Revising laws on public defender representation related to local ordinances

09:30:15 **Motion:** Rep. Brandon Ler moved that **SB 12 TO TABLE.**

09:30:15 **Vote:** Motion carried unanimously by voice vote.

EXECUTIVE ACTION ON SB 13 - Revise DUI laws related to admissible tests for presence of drugs

09:30:52 **Motion:** Rep. Brandon Ler moved that **SB 13 BE CONCURRED IN.**

09:30:52 **Vote:** Motion carried unanimously by voice vote.

09:30:52 **Carrier Assigned:** Rep. Neil Duram

09:31:25 Rep. Sheldon-Galloway has left

09:31:33 Vice Chair Ler has arrived

EXECUTIVE ACTION ON SB 164 - Name MHP headquarters for Kris Hansen

09:31:50 **Motion:** Rep. Brandon Ler moved that **SB 164 BE CONCURRED IN.**

09:31:50 **Vote:** Motion carried 16 - 2 by roll call vote with Rep. France, Rep. Zephyr, voting no.

09:31:50 **Carrier Assigned:** Rep. Amy Regier

EXECUTIVE ACTION ON SJ 3 - Joint resolution related to the Justice Counts Initiative

09:33:13 **Motion:** Rep. Brandon Ler moved that **SJ 3 BE CONCURRED IN.**

09:33:13 **Vote:** Motion carried unanimously by voice vote.

09:33:13 **Carrier Assigned:** Rep. Laurie Bishop

ADJOURNMENT

Adjournment: 09:33:53

Additional Documents: [EXHIBIT\(230316JUHaad\)](#)



2023 Session

Additional House Documents

- Business Report
- Roll Call -Attendance
- Standing Committee Reports
- Tabled Bills
- Fiscal Reports [if any]
- Roll Call Votes
- Proxies signed in ink
- Visitor's sign-in sheet.
- Informational Item's
- Witness Statements if any,
- Zoom/Internet Testimony Information & index
- Any other type of documents such as:
 - @ Petitions, {if any} Emails, all documents given to Committee Secretary before & after meeting.
- Public Testimony documents may or may not be scanned, they will be on file at the Montana Historical Society.
- Disclaimer: within the online minutes document you will see vacate spaces within the document. The LAWS II system creates these blank areas they are not loss of information.

The original exhibit/items are on file at the Montana Historical Society and may be viewed there.

Montana Historical Society Archives,
225 N. Roberts, Helena, MT 59620-1201
E-Document Specialist Susie Hamilton

BUSINESS REPORT
MONTANA HOUSE
REGULAR
(H) Judiciary

Date: 03/16/2023

Time: 8:00 AM

Place: Capitol

Room: 137

BILLS and RESOLUTIONS HEARD:

SB 148 Revise laws regarding legal representation of children - Sen. Dennis Lenz

SB 149 Establish penalties for false reporting in child protective services cases - Sen. Dennis Lenz

SB 265 Increase penalty for conviction of criminal activity of human trafficking - Sen. Mark Noland

SJ 3 Joint resolution related to the Justice Counts Initiative - Sen. Ryan Lynch

EXECUTIVE ACTION TAKEN:

SB 12:

SB 12 To Table

SB 13:

SB 13 Be Concurred In

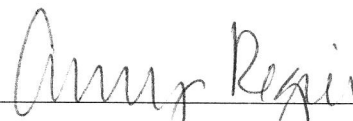
SB 164:

SB 164 Be Concurred In

SJ 3:

SJ 3 Be Concurred In

Comments:


Rep. Amy Regier-R, Chair

House
Roll Call
(H) Judiciary

DATE: 03/16/2023

TIME: 8:00 AM

<u>NAME</u>	<u>PRESENT</u>	<u>ABSENT/EXCUSED</u>
Ler, Brandon		X
Bishop, Laurie	X	
Mitchell, Braxton		X
Sheldon-Galloway, Lola	X	
Smith, Laura		X
Deming, Lee	X	
Knudsen, Casey		X
France, Tom	X	
Carlson, Jennifer	X	
Howell, SJ	X	
Hinkle, Caleb	X	
Duram, Neil	X	
Hawk, Donavon		X
Zephyr, Zooey		X
Kmetz, Greg	X	
Etchart, Jodee	X	
Hinkle, Jedediah	X	
Rusk, Wayne	X	
Abbott, Kim		X
Regier, Amy	X	

HOUSE COMMITTEE ON (H) JUDICIARY
March 16, 2023
VOTE TABULATION - SJ 3

Rep. Ler made a Motion that SJ 3 Be Concurred In
YEAS – 18 NAYS - 0

Y	Ler, Brandon
Y	Bishop, Laurie
Y	Mitchell, Braxton; by proxy
Y	Sheldon-Galloway, Lola; by proxy
Y	Smith, Laura
Y	Deming, Lee
Y	Knudsen, Casey
Y	France, Tom
Y	Carlson, Jennifer
Y	Howell, SJ
Y	Hinkle, Caleb
Y	Duram, Neil
	Hawk, Donavon; by proxy
Y	Zephyr, Zooey
Y	Kmetz, Greg
Y	Etchart, Jodee
Y	Hinkle, Jedediah
Y	Rusk, Wayne
	Abbott, Kim; by proxy
Y	Regier, Amy

HOUSE COMMITTEE ON (H) JUDICIARY
March 16, 2023
VOTE TABULATION - SB 164

Rep. Ler made a Motion that SB 164 Be Concurred In
YEAS – 16 NAYS - 2

Y	Ler, Brandon
Y	Bishop, Laurie
Y	Mitchell, Braxton; by proxy
Y	Sheldon-Galloway, Lola; by proxy
Y	Smith, Laura
Y	Deming, Lee
Y	Knudsen, Casey
N	France, Tom
Y	Carlson, Jennifer
Y	Howell, SJ
Y	Hinkle, Caleb
Y	Duram, Neil
	Hawk, Donavon; by proxy
N	Zephyr, Zooey
Y	Kmetz, Greg
Y	Etchart, Jodee
Y	Hinkle, Jedediah
Y	Rusk, Wayne
	Abbott, Kim; by proxy
Y	Regier, Amy

HOUSE COMMITTEE ON (H) JUDICIARY
March 16, 2023
VOTE TABULATION - SB 13

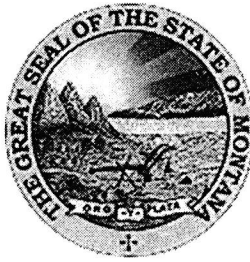
Rep. Ler made a Motion that SB 13 Be Concurred In
YEAS – 18 NAYS - 0

Y	Ler, Brandon
Y	Bishop, Laurie
Y	Mitchell, Braxton; by proxy
Y	Sheldon-Galloway, Lola; by proxy
Y	Smith, Laura
Y	Deming, Lee
Y	Knudsen, Casey
Y	France, Tom
Y	Carlson, Jennifer
Y	Howell, SJ
Y	Hinkle, Caleb
Y	Duram, Neil
	Hawk, Donavon; by proxy
Y	Zephyr, Zooey
Y	Kmetz, Greg
Y	Etchart, Jodee
Y	Hinkle, Jedediah
Y	Rusk, Wayne
	Abbott, Kim; by proxy
Y	Regier, Amy

HOUSE COMMITTEE ON (H) JUDICIARY
March 16, 2023
VOTE TABULATION - SB 12

Rep. Ler made a Motion that SB 12 To Table
YEAS – 18 NAYS - 0

Y	Ler, Brandon
Y	Bishop, Laurie
Y	Mitchell, Braxton; by proxy
Y	Sheldon-Galloway, Lola
Y	Smith, Laura
Y	Deming, Lee
Y	Knudsen, Casey
Y	France, Tom
Y	Carlson, Jennifer
Y	Howell, SJ
Y	Hinkle, Caleb
Y	Duram, Neil
	Hawk, Donavon; by proxy
Y	Zephyr, Zooey
Y	Kmetz, Greg
Y	Etchart, Jodee
Y	Hinkle, Jedediah
Y	Rusk, Wayne
	Abbott, Kim; by proxy
Y	Regier, Amy



House Standing Committee Report

March 16, 2023

page 1 of 1

To the Speaker,

We, your committee on **(H) Judiciary** recommend that **Senate Joint Resolution 3** (first reading copy – white) **Be Concurred In.**

Carrier: Rep. Bishop

Signed: _____

A handwritten signature in cursive script, reading "Amy Regier".

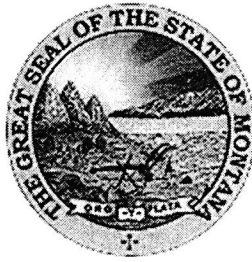
Rep. Amy Regier-R, Chair

-End-

Committee Vote:

Yes 18, No 0

*HR 3-16
@10:05am*



House Standing Committee Report

March 16, 2023

page 1 of 1

To the Speaker,

We, your committee on **(H) Judiciary** recommend that **Senate Bill 13** (first reading copy – white) **Be Concurred In.**

Carrier: Rep. Duram

Signed: _____

Amy Regier

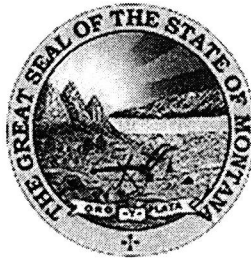
Rep. Amy Regier-R, Chair

-End-

Committee Vote:

Yes 18, No 0

*JH 3-14
@ 10:10am*



House Standing Committee Report

March 16, 2023

page 1 of 1

To the Speaker,

We, your committee on **(H) Judiciary** recommend that **Senate Bill 164** (first reading copy – white) **Be Concurred In**.

Carrier: Rep. A. Regier

Signed: _____

Amy Regier

Rep. Amy Regier-R, Chair

-End-

Committee Vote:

Yes 16, No 2

*HR 3-16
@ 10:10am*

BILL TABLED NOTICE

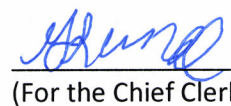
House (H) Judiciary

The House (H) Judiciary TABLED

SB12-Revising laws on public defender representation related to local ordinances- Sen. Ryan Lynch

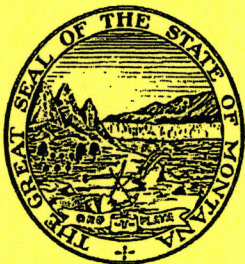
by motion, on Thursday March 16, 2023, (PLEASE USE THIS ACTION DATE IN LAWS BILL STATUS).


(For the Committee)


(For the Chief Clerk of the House)

10:20am / 3-16-23
(time) (date)

Braxton



The Big Sky Country

MONTANA HOUSE OF REPRESENTATIVES

AUTHORIZED COMMITTEE PROXY 68TH LEGISLATIVE SESSION

I request to be excused from the Judiciary Committee.

I desire to leave my proxy vote with Rep. Ler.

PLEASE USE PEN

BILL	MOTION (Include AMENDMENT #)	AYE	NO
SB12	Tabled	X	
SB13		X	
SB164		X	
SJ 3		X	

BILL	MOTION (Include AMENDMENT #)	AYE	NO

I authorize my vote to be matched with that of Rep. Ler
for any amendments proposed on this date.

Rep. Braxton Mitchell
(Signature)

(Print Name)

3-16-2023
(Meeting Date)



The Big Sky Country

MONTANA HOUSE OF REPRESENTATIVES
AUTHORIZED
COMMITTEE PROXY
68TH LEGISLATIVE SESSION

I request to be excused from the Judiciary Committee.

I desire to leave my proxy vote with Rep. Ler.

PLEASE USE PEN

BILL	MOTION (Include AMENDMENT #)	AYE	NO
SB12	Tabled	X	
SB13		X	
SB14		X	
SJ3		X	

BILL	MOTION (Include AMENDMENT #)	AYE	NO

I authorize my vote to be matched with that of Rep. Ler
for any amendments proposed on this date.

Rep. Sheldon Galloway 3/16/2023
(Signature) (Print Name) (Meeting Date)



VISITOR REGISTER
JUDICIARY COMMITTEE



VISITOR REGISTER

BILL NO: SB265

SHORT TITLE: _____

Witness Statement forms are available if you care to submit written testimony.

PLEASE PRINT

C:\Users\cl7244\Desktop\Judiciary\Visitor Register JUH 2023.docx



VISITOR REGISTER

DATE 3/16

BILL NO: \$B 149

SPONSOR(S): Sen Lens

Please leave prepared testimony with the clerk.

PLEASE PRINT

PLEASE PRINT

PLEASE PRINT

PLEASE PRINT

C:\Users\cl7244\Desktop\Judiciary\Visitor Register JUH 2023.docx



VISITOR REGISTER

DATE 3/16

BILL NO: SB 148

SPONSOR(S): Sen. Lenz

SHORT TITLE: _____

Witness Statement forms are available if you care to submit written testimony.

PLEASE PRINT

C:\Users\cl7244\Desktop\Judiciary\Visitor Register JUH 2023.docx

03/16/23 JUH ONLINE TESTIMONY LIST

SB	148	Proponent	Denise Johnson	Billings MT	Montana Child Protection Alliance
SB	148	Informational	Brett Schandelson	Missoula	Office of Public Defender
SB	149	Proponent	Denise Johnson	Billings MT	Montana Child Protection Alliance